

**EXHIBITS J-L OF DECLARATION OF NEIL J. OXFORD
IN SUPPORT OF THE MEMORANDUM OF
MOVANTS IN OPPOSITION TO THE MOTION IN LIMINE OF BARCLAYS
CAPITAL INC. FOR AN ORDER EXCLUDING THE EXPERT TESTIMONY OF
DANIEL MCISAAC REGARDING LBI'S OBLIGATIONS UNDER SEC RULES 15c3-1,
15c3-3 AND/OR THE SECURITIES INVESTOR PROTECTION ACT**

EXHIBIT J

BARCLAYS CAPITAL INC.

As of September 20, 2008

Lehman Brothers Holdings Inc.
Lehman Brothers Inc.
LB 745 LLC
Attn: Steven Berkenfeld, Esq.
Facsimile: (646) 758-4226

Ladies and Gentlemen:

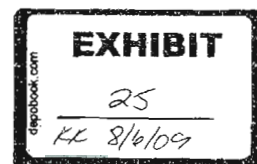
Reference is made to the Asset Purchase Agreement, dated as of September 16, 2008 (the "Original Agreement") as amended by the First Amendment thereto dated as of September 19, 2008 (the "First Amendment") and, the Original Agreement as so amended, the "Agreement", by and among Lehman Brothers Holdings Inc. ("LBHI"), Lehman Brothers Inc. ("LBI"), LB 745 LLC ("745") and Barclays Capital Inc. ("Purchaser"). Each capitalized term used and not defined herein shall have the meaning ascribed to it in the Original Agreement. This letter agreement (this "Letter") clarifies the intention of the parties with respect to certain provisions of the Agreement, supplements in certain respects the agreements of the parties stated therein and amends the Agreement in certain respects, and is binding on the parties hereto upon its execution and delivery. All references herein to the Original Agreement are to the conformed copy attached hereto of the hand marked Original Agreement.

1. Purchased Assets; Excluded Assets.

(a) The Purchased Assets means (i) all of the assets of Seller used primarily in the Business or necessary for the operation of the Business (in each case, excluding the Excluded Assets) and (ii) none of the assets of Subsidiaries of LBHI (other than assets of LBI) except as otherwise specifically provided in the Agreement or this Letter. Purchased Assets shall include:

(i) the items set forth in clauses (b), (c) and (f) through (o) and (q) through (s) of the definition of "Purchased Assets" in the Original Agreement;

(ii) with respect to clauses (a), (d) and (e) of the definition of "Purchased Assets" in the Original Agreement, instead of the items referred to in such clauses, (A) the securities owned by LBI and transferred to Purchaser or its Affiliates under the Barclays Repurchase Agreement (as defined below) as specified on Schedule A previously delivered by Seller and accepted by Purchaser, (B) such securities and other assets held in LBI's "clearance boxes" as of the time of the Closing, which at the close of business on September 21, 2008 were as specified on Schedule B previously delivered by Seller and accepted by Purchaser (provided, however, that Purchaser in its discretion may



elect within 60 days after the Closing to return any such securities to LBI); provided, that no securities owned by LBHI or any Subsidiary of LBHI (other than LBI and other than as specified in the Agreement or clause (iii) below) are Purchased Assets and (C) exchange-traded derivatives (and any property that may be held to secure obligations under such derivatives) and collateralized short-term agreements;

(iii) the equity of Lehman Brothers Canada, Inc., Lehman Brothers Sudamerica SA and Lehman Brothers Uruguay SA; and

(iv) all prime brokerage business and accounts and repurchase agreement operations and securities lending operations of the Business (for the avoidance of doubt, other than those that are part of the IMD Business); and

(v) any rights or interests Seller may have with respect to any escrow or other account established in connection with the Global Research Analyst Settlement entered by the U.S. District Court on October 31, 2003 (the "Research Settlement"), or funds otherwise set aside for the procurement of independent research pursuant to the Research Settlement, but only to the extent that Purchaser is required to make payments in accordance with the Research Settlement as a result of its acquisition of LBI's investment banking and research operations.

(b) For the avoidance of doubt, the "Business" includes LBI's commodities business, government securities trading operations and mortgage-backed securities trading operations of LBI (but not any securities of such nature held by Seller except as otherwise specified herein or in the Agreement).

(c) The Excluded Assets shall mean the assets of Seller and its Subsidiaries referred to in clauses (a), (c) through (j), and (l) through (q) of the definition of "Excluded Assets" in the Original Agreement and the other assets identified in this Letter as Excluded Assets. Except as otherwise specified in the definition of "Purchased Assets," "Excluded Assets" shall include any cash, cash equivalents, bank deposits or similar cash items of Seller and its Subsidiaries; provided that "Excluded Assets" shall not include any and all property of any customer, or maintained by or on behalf of LBI to secure the obligations of any customer, whose account(s) are being transferred to Purchaser as part of the Business. The following shall also be Excluded Assets: All of the investments held by Seller or their Subsidiaries in collateralized debt obligations, collateralized loan obligations, over-the-counter derivatives, TBA mortgage notes and similar asset-backed securities and corporate loans, other than those subject to the Barclays Repurchase Agreement, and until any securities pledged as collateral under Seller clearing arrangements with JP Morgan Chase & Co. or its Affiliates (other than those referred to in Section 1(a)(ii) of the Letter). Also included in the Excluded Assets are the mortgage servicing rights for Ginnie Mae guaranteed securities. Included in clause (h) of the definition of "Excluded Assets" in the Original Agreement are life insurance policies owned by Seller and its Subsidiaries. For the avoidance of doubt, the equity interests and assets of Lehman Brothers Commodity Services, Inc., including the equity of, as well as the assets of the energy marketing and services business of Eagle Energy Management LLC, are Excluded Assets (rather than Purchased Assets). The

reference to "third parties" in clause (i) of the definition of "Excluded Assets" includes any person, including Affiliates of Seller. Clause (h) of the definition of Excluded Assets in the Original Agreement is hereby amended to remove the following clause: "other than customer account insurance supplemental to SIPC coverage included in the Business."

(d) Sections 3 and 4 of the First Amendment are hereby deleted in their entirety and shall be of no effect *ab initio*. LBI hereby instructs Purchaser to pay at the Closing \$250 million of the Cash Amount to the Depository Trust Clearance Corporation ("DTC") for deposit as collateral against LBI's obligations to DTC (including its affiliated clearing organizations). Such collateral account shall be maintained in accordance with the agreement among LBI, Purchaser and DTC entered into in connection with the Closing.

(e) Seller hereby represents and warrants to Purchaser that LB I Group Inc. has and had as of the date on which LB I Group Inc. transferred to LBI the equity of Townsend Analytics, Ltd., LB I Group Inc. no indebtedness.

2. IMD Business. For purposes of the Agreement, the IMD Business consists of the asset management and the alternatives – private equity businesses of Seller and the Subsidiaries, but not the private investment management business of Seller and the Subsidiaries (other than the CTS (Corporate Cash) business). As a result, Excluded Assets include the asset management business, the alternatives-private equity business and the CTS (Corporate Cash) business. The private investment management business (other than the CTS (Corporate Cash) business) (the "PIM Business") is a Purchased Asset and the Purchased Assets shall include the assets of the Seller used exclusively in the PIM Business. The forgivable notes issued by PIM employees to Seller or its Affiliates shall be an Excluded Asset. Excluded Liabilities shall include any pre-closing legal, tax or compliance Liabilities associated with IRA accounts for the benefit of clients of the PIM Business.

3. Assumed and Excluded Liabilities. Clause (a) of the definition of "Assumed Liabilities" consists solely of all Liabilities incurred by Purchaser and arising after the Closing in connection with the Business. Clause (d) of the definition of "Assumed Liabilities" in the Original Agreement is understood as though it read as follows: "accounts payable incurred in the Ordinary Course of Business of Seller after, with respect to each entity comprising Seller, the date on which such entity commenced a voluntary case or cases under Chapter 11 or Chapter 7, as the case may be, of the Bankruptcy Code, associated with the Business (other than accounts payable arising out of or in connection with any Excluded Contract), including, for the avoidance of doubt, to the extent arising after such date (i) invoiced accounts payable and (ii) accrued but uninviced accounts payable)." Consistent with the other provisions of this Letter, no Liabilities described in clause (i) of the definition of Assumed Liabilities shall be "Assumed Liabilities." For the avoidance of doubt, any Liabilities of Seller or its Subsidiaries under the \$15.8 billion tri-party repurchase facility dated on or about September 18, 2008 funded by JP Morgan Chase shall be "Excluded Liabilities."

4. Consideration. The parties, after considering the available appraisal information, have agreed upon the value of the Lehman headquarters at 745 Seventh Avenue, the Cranford New Jersey Data Center and the Piscataway New Jersey Data Center shall be in the aggregate \$1,290,000,000 and shall not be subject to reduction with respect to any commission

and, accordingly, the Cash Amount shall be \$1,540,000,000 (subject to certain holdback amounts relating to the real estate being transferred pursuant to the Agreement as provided by Section 12.2 of the Agreement).

5. License. All marks containing the words "LEHMAN" or "LEHMAN BROTHERS" assigned under the Agreement shall be considered Licensed Marks under Section 8.9 of the Agreement. The license to use the Licensed Marks granted pursuant to Section 8.9 of the Agreement with respect to the investment banking and capital markets businesses of Seller and its Subsidiaries is limited to a term of 2 years from the Closing Date (without limiting the perpetual term of the license granted for use in connection with the IMD Business (including in respect of any one or more of the private equity or other investment funds within the IMD Business) or in connection with winding up of any operations or businesses of Seller or any of its Subsidiaries). The licenses pursuant to Section 8.9 are not assignable or sublicensable, except that such licenses are assignable and sublicensable (i) for use in connection with IMD Business or any portion of the IMD Business and (ii) to Seller's Subsidiaries or to a purchaser of any business of Seller and its Subsidiaries solely for use by such Subsidiaries or purchaser in connection with the winding up of such business.

6. Subordinated Notes of LBI. The outstanding subordinated notes of LBI are not Assumed Liabilities, and such subordinated notes and any Liabilities associated with such subordinated notes therefore are Excluded Liabilities.

7. Breakup Fee. 745 is jointly and severally liable with LBHI and LBI for Seller's obligations under the Agreement to pay the Breakup Fee and Expense Reimbursement (each of which has the meaning ascribed to it in the Breakup Fee and Competing Bid Order).

8. Transfer of Customer Accounts. All customer accounts of LBI (other than customer who are Affiliates of LBI) shall be transferred to Purchaser. In connection therewith, Purchaser shall receive (i) for the account of the customer, any and all property of any customer, including any held by or on behalf of LBI to secure the obligations of any customer, whose account(s) are being transferred to Purchaser as part of the Business and (ii) to the extent permitted by applicable law, and as soon as practicable after the Closing, \$769 million of securities, as held by or on behalf of LBI on the date hereof pursuant to Rule 15c3-3 of the Securities Exchange Act of 1934, as amended, or securities of substantially the same nature and value. Liabilities arising under Seller's arrangements with DTC and its affiliated clearing organizations shall be Excluded Liabilities.

9. Deletion of Purchase Price Adjustment Provisions. Section 3.3 of the Original Agreement is hereby deleted in its entirety and shall be of no effect *ab initio*.

10. Payables, Deposits and Receivables. No payables or deposits of a Seller or Subsidiary shall be Assumed Liabilities, except to the extent resulting from a Purchased Contract and except as provided in Section 8. No receivables shall be Purchased Assets, except to the extent resulting from a Purchased Contract.

11. Intercompany Obligations. Except as expressly contemplated by this Letter, the Agreement or the Transition Services Agreement, Purchased Assets and Assumed Liabilities shall not include any intercompany receivables or payables or other obligations

between or among any Seller and any of LBHI or any Subsidiary of LBHI. It is understood that nothing contained in this Letter shall affect the rights or obligations of the parties to the Transition Services Agreement contemplated by the Agreement.

12. Schedule 12.3. Following the Closing, the parties shall reasonably agree to an allocation of the purchase price (including the Assumed Liabilities) among the Purchased Assets for tax purposes and set forth such allocation on a Schedule 12.3 to be signed by the parties.

13. Barclays Repurchase Agreement. Effective at Closing, (i) all securities and other assets held by Purchaser under the September 18, 2008 repurchase arrangement among Purchaser and/or its Affiliates and LBI and/or its Affiliates and Bank of New York as collateral agent (the "Barclays Repurchase Agreement") shall be deemed to constitute part of the Purchased Assets in accordance with Paragraph 1(a)(ii) above, (ii) Seller and Purchaser shall be deemed to have no further obligations to each other under the Barclays Repurchase Agreement (including, without limitation, any payment or delivery obligations), and (iii) the Barclays Repurchase Agreement shall terminate. Additionally, the Notice of Termination relating to the Barclays Repurchase Agreement dated September 19, 2008 is hereby deemed rescinded and void *ab initio* in all respects.

14. Risk of Loss of Artwork. During such period that Purchaser has the right to possess the artwork following the Closing pursuant to Section 8.16 of the Agreement, Purchaser shall bear the risk of loss for such artwork. In the event that any artwork is damaged or lost during such period, Purchaser shall pay to Seller an amount equal to the damage or loss, consistent with the insured appraised value (as determined by an independent, recognized appraiser) for such artwork, assuming such artwork had not been lost or damaged.

15. Records. The records referred to in Section 8.7 include all Documents that are Purchased Assets and shall be considered to include all electronic documents, including e-mail. The joint administrators of the Lehman European entities are parties to which records and personnel shall be made available in accordance with the terms of Section 8.7.

16. Subleases. Notwithstanding anything to the contrary contained in Sections 4.2(d), 4.3(c), 8.14 or any other provision of the Agreement, with respect to the leased premises located in (i) 555 California Street, San Francisco, California ("SF Property"), (ii) 125 High Street, Boston, Massachusetts ("Boston Property"), (iii) 190 S. LaSalle Street, Chicago, Illinois ("Chicago Property"), and (iv) 10250 Constellation Boulevard, Los Angeles, California ("LA Property") and together with the SF Property, Boston Property and Chicago Property, the "Sublease Properties", the parties agree as follows:

(a) As contemplated in the Agreement, on the Closing Date, (i) the underlying leases affecting the Chicago Property, the LA Property and the Boston Property shall be assumed by LBHI or LBI in connection with its bankruptcy proceeding and each of such leases shall be assigned by Seller to Purchaser and Purchaser shall assume all of Seller's obligations thereunder pursuant to assignment and assumption agreements mutually acceptable to Seller and Purchaser, and (ii) the underlying lease affecting the SF Property shall be assumed by Seller in connection with the bankruptcy proceedings.

(b) With respect to each Sublease Property, Seller and Purchaser shall, within a commercially reasonable period of time following the Closing Date, negotiate in good faith, and thereafter execute and deliver, a sublease agreement reasonably acceptable to both Purchaser and Seller and subject to the terms of the applicable underlying lease, pursuant to which a portion of the demised premises under such underlying lease (such portion of the premises to be agreed upon by the parties) shall be subleased to (A) with respect to the SF Property, the Purchaser, and (B) with respect to the LA Property, Chicago Property and Boston Property, the Seller (regardless of the creditworthiness of Seller) or any person who purchases the IMD Business (provided that any such purchaser entering into the sublease agreement as a subtenant shall be reasonably acceptable to the Purchaser) (the landlord under such sublease being referred to as the "Sublandlord" and the tenant under such sublease being referred to as the "Subtenant"), in each case, upon such terms as shall be mutually acceptable to the Sublandlord and Subtenant provided that (1) the Subtenant shall pay rent and other charges under such sublease agreement equal to its proportionate share of the rent and other charges payable by the Sublandlord to the landlord under the underlying lease (which proportionate share shall be based upon the relative square footage of the subleased space in proportion to the square footage of the overall demised space under the underlying lease), (2) the term of the sublease agreement shall be a period commencing on the Closing Date and ending on the day immediately preceding the expiration date of the underlying lease (as the same may be extended pursuant to the terms of the underlying lease), (3) any alterations or modifications which the Sublandlord and Subtenant mutually agree need to be made to the demised premises in order to segregate the subleased space from the remainder of the demised premises under the underlying lease shall be performed by the Sublandlord and the cost thereof (including the cost of any plans and specifications, drawings, permits, licenses, and other "soft" costs related thereto) shall be shared by the Sublandlord and Subtenant in proportion to the square footage of their respective spaces. Prior to the execution and delivery of the sublease agreement for a particular Sublease Property, subject to reasonable premises security procedures and giving due regard to regulatory considerations (e.g., segregation) including the right to relocate such employees within the applicable premises, and for a commercially reasonable period after the Closing Date, (i) with respect to the SF Property, to the extent that Transferred Employees occupied any portion of the SF Property prior to Closing, such Transferred Employees shall be permitted to continue to occupy and use the SF Property to the same extent and for the same purposes as the SF Property was occupied by such Transferred Employees prior to the Closing; provided, that the foregoing shall be subject to Purchaser's ability to substitute a substantially similar number of new employees of Purchaser for any such Transferred Employees as provided in Paragraph 18 below, and (ii) with respect to each Sublease Property other than the SF Property, to the extent that Excluded Employees occupied any portion of such Sublease Property prior to Closing, such Excluded Employees shall be permitted to continue to occupy and use such Sublease Property to the same extent and for the same purposes as such Sublease Property was occupied by such Excluded Employees prior to the Closing; provided, that the foregoing shall be subject to Seller's ability to substitute a substantially similar number of new employees of Seller for any such Excluded Employees as provided in Paragraph 18 below. In each case described in clauses (i) and (ii) above, no rent or other payments shall be made to the

party which is the tenant under the underlying lease until execution and delivery of the applicable sublease agreement at which time all rent calculated under the sublease agreement for the period from the Commencement Date (which date shall be the Closing Date) through end of the month in which the sublease agreement is executed shall be paid to the Sublandlord contemporaneously with the execution and delivery of the sublease agreement.

(c) If any consent or approval from any landlord under an underlying lease is required pursuant to the terms of the underlying lease in order to effectuate the applicable sublease agreement and/or to the extent that any landlord under an underlying lease has recapture and/or termination rights that would be triggered by the proposed sublease arrangement to be reflected in the applicable sublease agreement, Seller and Purchaser will cooperate and use commercially reasonable efforts in obtaining such consent to the applicable sublease agreement and/or obtaining waivers from the landlord with respect to any such recapture and/or termination rights and shall otherwise comply in all respects with the terms and provisions of the underlying lease in connection with the execution and delivery of the applicable sublease agreement.

17. Deferred Transfers. Notwithstanding anything to the contrary contained in the Agreement, (a) the parties agree that during the nine month period after the Closing Date that Excluded Employees are permitted to occupy and use real property subject to a Transferred Real Property Lease in accordance with Section 8.11(f) of the Agreement, that the Seller and its Affiliates shall also be permitted to substitute a substantially similar number of new employees of Seller or its Affiliates for any such Excluded Employees, and that any such new employees of Seller or its Affiliates shall be permitted to occupy and use such real property to the same extent and on the same basis as the Excluded Employees in accordance with Section 8.11(f), and (b) the parties agree that during the nine month period after the Closing Date that Transferred Employees are permitted to occupy and use real property is not subject to a Transferred Real Property Lease in accordance with Section 8.11(g) of the Agreement, that the Purchaser and its Affiliates shall also be permitted to substitute a substantially similar number of new employees of Purchaser or its Affiliates for any such Transferred Employees, and that any such new employees of Purchaser or its Affiliates shall be permitted to occupy and use such real property to the same extent and on the same basis as the Transferred Employees in accordance with Section 8.11(g).

18. 745 Seventh Avenue. The parties acknowledge that there is no mortgage encumbering 745's interest in the premises at 745 Seventh Avenue, New York, New York and that, notwithstanding Section 10.1(d) of the Agreement, only the \$500,000,000 promissory note made by 745 in favor of LW-LLP Inc. will be fully repaid and extinguished.

19. Prorations. Notwithstanding Section 12.2 of the Agreement, to the extent that the parties are unable to agree upon all customary prorations for the Purchased Assets as of the Closing, they shall cooperate in finalizing all such prorations within thirty (30) days following the Closing Date.

20. Schedules. Corrected Schedules 1.1(a) and 1.1(b) are attached hereto.

21. Definition of Excluded Contract. As used in the Agreement, the term "Excluded Contract" shall include any ISDA Master Agreement and any master swap agreement and any schedule thereto or supplement or amendment thereto.

22. PIM Business Leases.

(a) Notwithstanding anything to the contrary contained in the Agreement, Purchaser shall have a period of ten (10) days following the Closing Date to perform due diligence on the leases listed on Schedule 1(c) attached hereto (the "PIM Leases"). At any time during such period, Purchaser and its Affiliates shall have the option to cause Seller to assume and assign any or all of such PIM Leases to Purchaser, and Seller agrees to assume and assign such PIM Leases to Purchaser. Upon assignment of a PIM Lease to Purchaser, such PIM Lease shall become a Transferred Real Property Lease. With respect to any PIM Lease that becomes a Transferred Real Property Lease, during the nine month period after the Closing Date, to the extent that Excluded Employees occupied real property subject to such Transferred Real Property Leases prior to Closing, such Excluded Employees, and a substantially similar number of new employees of Seller or its Affiliates that may be substituted for any such Excluded Employees, shall be permitted to occupy and use such real property on the same basis as provided in Section 8.11(f) of the Agreement.

(b) Notwithstanding the foregoing or anything to the contrary contained in Section 22(a) or any other provision of the Agreement, with respect to the PIM Lease for the premises located at 399 Park Avenue, New York, New York (the "New York Property"), the underlying lease shall not be subject to assignment to Purchaser and the Purchaser shall only have the option to require that Seller sublease to Purchaser or its Affiliates the sixth floor of the New York Property (or a portion of the sixth floor) (the "NY Sublease Premises"), and Seller agrees to sublease the NY Sublease Premises, subject to the parties' compliance with the terms of the underlying lease including, without limitation, any notice or consent requirements set forth therein. If Purchaser elects to sublease the NY Sublease Premises as provided herein, all of the terms and conditions set forth in this letter agreement applicable to the SF Property shall also apply to the sublease of the NY Sublease Premises.

23. No Overseas Assets. Although LBI has been part of a global business and Purchaser remains interested in potentially acquiring other portions thereof and obtaining the services of the employees thereof, all assets and rights of the Lehman companies that would otherwise be Purchased Assets (other than Seller, 745 and any Subsidiaries sold pursuant to the Original Agreement or the Letter) that cannot be sold pursuant to Section 2.1 of the Original Agreement as a result of being subject to governmental conservatorship or administration shall be considered "Excluded Assets," except as notified by the administrator to LBI from time to time or until such assets and rights can be so sold. Except with respect to Purchased Intellectual Property, no assets owned (in whole or in part) by any Subsidiary of LBHI (other than LBI, 745 and any Subsidiaries sold pursuant to the Original Agreement or the Letter) organized under the laws of a jurisdiction other than the United States of America or a state thereof are included among the Purchased Assets; provided, however, that to the extent any such asset is jointly owned by any such Subsidiary and Seller and used primarily in or necessary for the operation of the Business, Seller and Purchaser shall each use its commercially reasonable efforts to cause such Subsidiary to enter into arrangements reasonably acceptable to Purchaser to permit

Purchaser to acquire the interest of such Subsidiary in such asset or to have the use thereof (provided that neither Seller nor Purchaser shall be required to make any payment in order to establish such arrangement).

The representations and warranties of the parties contained in this Letter and in the Agreement shall not survive the Closing. This Letter shall be deemed to be made in and in all respects shall be interpreted, construed and governed by and in accordance with the laws of the State of New York applicable to contracts made and to be performed entirely within that state. This Letter may be executed in any number of counterparts (including by facsimile), each such counterpart being deemed to be an original instrument, and all such counterparts shall together constitute the same agreement.

[Remainder of page left blank.]

Sincerely,

BARCLAYS CAPITAL INC.

By: Herard A. Brea
Name: Gerard S. Brea
Title:

Agreed to and accepted as of the date first written above:

LEHMAN BROTHERS HOLDINGS INC.

By: _____
Name:
Title:

LEHMAN BROTHERS INC.

By: _____
Name:
Title:

LB 745 LLC

By: _____
Name:
Title:


Sincerely,

BARCLAYS CAPITAL INC.

By: _____
Name:
Title:

Agreed to and accepted as of the date first written above:

LEHMAN BROTHERS HOLDINGS INC.

By: 
Name: Steven Berkenfeld
Title: Vice President

LEHMAN BROTHERS INC.

By: _____
Name:
Title:

LB 745 LLC

By: _____
Name:
Title:

Sincerely,

BARCLAYS CAPITAL INC.


By: _____
Name:
Title:

Agreed to and accepted as of the date first written above:

LEHMAN BROTHERS HOLDINGS INC.

By: _____
Name:
Title:

LEHMAN BROTHERS INC.

By: 
Name: Anson B. Frelinghuysen
Title: as Counsel for James W. Giddens,
Trustee for the SIPA Liquidation
of Lehman Brothers Inc.
LB 745 LLC

By: _____
Name:
Title:

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SEP-20-2008 18:39

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Sincerely,

BARCLAYS CAPITAL INC.

By: _____
Name:
Title:

Agreed to and accepted as of the date first written above:

LEHMAN BROTHERS HOLDINGS INC.

By: _____
Name:
Title:

LEHMAN BROTHERS INC.

By: _____
Name:
Title:

LB 745 LLC

By: Mark Marcus
Name: Mark Marcus
Title: President

Schedule 1(a) - Excluded Real Estate Assets

New York

1301 Avenue of the Americas - 7th Floor
1271 Avenue of the Americas
399 Park Avenue
605 Third Avenue
85 Tenth Avenue

New Jersey

Jersey City - 101 Hudson St.
Livingston - 2 Peachtree Hill Road (Co-location)
Florham Park - 230 Park Avenue
Hoboken - 111 River Street (Sublease)

Branches

Atlanta - 3414 Peachtree Road
Calgary - 150 Sixth Avenue, Suite 3370 - PetroCanada
Columbia - Little Patuxent Parkway (NB)
Dallas - 200 Crescent Court
Dallas - 325 N. St. Paul Street (former Crossroads)
Greenwich - 8 Sound Shore Drive
Houston - 600 Travis Street
Los Angeles - 10880 Wilshire Blvd.
Menlo Park - 3000 Sand Hill Road
Miami - 1111 Brickell Avenue - Barclay's Financial Center
Newport Beach - 680 Newport Center Dr, Suite 150
Palm Beach - 450 Royal Palm Way (License agreement for 1,704 on 6th floor)
Philadelphia - 1735 Market Street - Mellon Bank Center
San Francisco - 555 California Street
Tampa - 401 East Jackson Street, 24th flr (NB)
Wilmington - 1000 West Street - Brandywine Building (LBB)

South America Branches

Mexico City - Av. Paseo de la Reforma 265 Col. Cuauhtemoc

City	NA	Location	Local Legal Entity	Employed (FTE) only	Local Expenditures	Regional Payroll		Local	Total	State		Local	Total	Overseas		Local	Total	C.R.E. Assets		Local	Total	IT Assets	
						L.S.	Aggregates	L.S.		L.S.	Aggregates	L.S.		L.S.	Aggregates	L.S.		Total	Aggregates	L.S.		Total	Aggregates
Albany	NY	123 High Street	Albany Medical Center	45,425	1,507,784	1,507,784		211	138	101	211	138	101	2,144,575	1,948,113	1,139,368	3,283,943	3,979,750	3,683,195	2,917,840	337,750	108,579	109,202
Albany	NY	190 South Lafayette Street	Albany Medical Center	1	1,507,784	1,507,784		211	138	101	211	138	101	2,144,575	1,948,113	1,139,368	3,283,943	3,979,750	3,683,195	2,917,840	337,750	108,579	109,202
Albany	NY	200 South Lafayette Street	Albany Medical Center	1	1,507,784	1,507,784		211	138	101	211	138	101	2,144,575	1,948,113	1,139,368	3,283,943	3,979,750	3,683,195	2,917,840	337,750	108,579	109,202
Albany	NY	277 Commonwealth Avenue	Albany Medical Center	1	1,507,784	1,507,784		211	138	101	211	138	101	2,144,575	1,948,113	1,139,368	3,283,943	3,979,750	3,683,195	2,917,840	337,750	108,579	109,202
Albany	NY	277 Commonwealth Avenue	Albany Medical Center	1	1,507,784	1,507,784		211	138	101	211	138	101	2,144,575	1,948,113	1,139,368	3,283,943	3,979,750	3,683,195	2,917,840	337,750	108,579	109,202
Albany	NY	277 Commonwealth Avenue	Albany Medical Center	1	1,507,784	1,507,784		211	138	101	211	138	101	2,144,575	1,948,113	1,139,368	3,283,943	3,979,750	3,683,195	2,917,840	337,750	108,579	109,202
Albany	NY	277 Commonwealth Avenue	Albany Medical Center	1	1,507,784	1,507,784		211	138	101	211	138	101	2,144,575	1,948,113	1,139,368	3,283,943	3,979,750	3,683,195	2,917,840	337,750	108,579	109,202
Albany	NY	277 Commonwealth Avenue	Albany Medical Center	1	1,507,784	1,507,784		211	138	101	211	138	101	2,144,575	1,948,113	1,139,368	3,283,943	3,979,750	3,683,195	2,917,840	337,750	108,579	109,202
Albany	NY	277 Commonwealth Avenue	Albany Medical Center	1	1,507,784	1,507,784		211	138	101	211	138	101	2,144,575	1,948,113	1,139,368	3,283,943	3,979,750	3,683,195	2,917,840	337,750	108,579	109,202
Albany	NY	277 Commonwealth Avenue	Albany Medical Center	1	1,507,784	1,507,784		211	138	101	211	138	101	2,144,575	1,948,113	1,139,368	3,283,943	3,979,750	3,683,195	2,917,840	337,750	108,579	109,202
Albany	NY	277 Commonwealth Avenue	Albany Medical Center	1	1,507,784	1,507,784		211	138	101	211	138	101	2,144,575	1,948,113	1,139,368	3,283,943	3,979,750	3,683,195	2,917,840	337,750	108,579	109,202
Albany	NY	277 Commonwealth Avenue	Albany Medical Center	1	1,507,784	1,507,784		211	138	101	211	138	101	2,144,575	1,948,113	1,139,368	3,283,943	3,979,750	3,683,195	2,917,840	337,750	108,579	109,202
Albany	NY	277 Commonwealth Avenue	Albany Medical Center	1	1,507,784	1,507,784		211	138	101	211	138	101	2,144,575	1,948,113	1,139,368	3,283,943	3,979,750	3,683,195	2,917,840	337,750	108,579	109,202
Albany	NY	277 Commonwealth Avenue	Albany Medical Center	1	1,507,784	1,507,784		211	138	101	211	138	101	2,144,575									

SCHEDULE 1(C)

PIM LEASES

	City	State	Address	Tenant	Landlord
1.					Monarch Centre Associates,
	Atlanta	GA	3414 Peachtree Road, NE	Lehman Brothers Inc.	LLC
2.					Crescent TC
	Dallas	TX	200 Crescent Court	Lehman Brothers Inc.	Investors LP
3.					8 Sound Shore
	Greenwich	CT	8 Sound Shore Drive	Lehman Brothers Holdings Inc.	Associates, LLC
4.					1111 Brickell
	Miami	FL	1111 Brickell Avenue	Lehman Brothers Inc.	Office, LLC
5.					The Irving
	Newport Beach	CA	680 Newport Center Drive	Lehman Brothers Holdings Inc.	Company
6.					Palm Beach
	Palm Beach	FL	450 Royal Palm Way	Lehman Brothers Inc.	Centre 1, LLC
7.					Nine Penn Center
	Philadelphia	PA	1735 Market Street	Lehman Brothers Inc.	Associates, LP
8.					Boston
	New York	NY	399 Park Avenue	Lehman Brothers Inc.	Properties LP

EXHIBIT K

1
2 UNITED STATES BANKRUPTCY COURT
3 SOUTHERN DISTRICT OF NEW YORK

4 -----x

5 In Re:

6 Chapter 11

7 LEHMAN BROTHERS Case No. 08-13555(JMP)
8 HOLDINGS, INC., et al, (Jointly Administered)
9 Debtors.

10 -----x

11
12 DEPOSITION OF JONATHAN HUGHES

13 New York, New York

14 January 15, 2010

15
16 Reported by:

17 MARY F. BOWMAN, RPR, CRR

18 JOB NO. 27056
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21
22
23
24
25

Page 2	Page 3
<p>1 2 3 4 5 January 15, 2010 6 10:15 a.m. 7 8 Deposition of JONATHAN HUGHES, held at 9 the offices of Hughes, Hubbard & Reed, LLP, One 10 Battery Park Plaza, New York, New York, before 11 Mary F. Bowman, a Registered Professional 12 Reporter, Certified Realtime Reporter, and 13 Notary Public of the State of New York and New 14 Jersey. 15 16 17 18 19 20 21 22 23 24 25</p>	<p>1 2 APPEARANCES: 3 4 JONES DAY, LLP 5 Attorneys for Lehman Brothers, Inc. 6 222 East 41st Street 7 New York, New York 10017-6702 8 BY: ROBERT W. GAFFEY, ESQ. 9 BRIDGET CRAWFORD, ESQ. 10 11 12 BOIES, SCHILLER & FLEXNER, LLP 13 Attorneys for Barclays and The Witness 14 575 Lexington Avenue 15 New York, New York 10022 16 BY: JACK STERN, ESQ. 17 18 19 QUINN, EMANUEL, URQUHART, OLIVER & HEDGES, LLP 20 Attorneys for the Creditors Committee 21 51 Madison Avenue - 22nd Floor 22 New York, New York 10010 23 BY: ERIC KAY, ESQ. 24 25</p>
Page 4	Page 5
<p>1 2 APPEARANCES: 3 4 HUGHES, HUBBARD & REED, LLP 5 Attorneys for the SIPA Trustee 6 One Battery Park Plaza 7 New York, New York 10004-1482 8 BY: WILLIAM R. MAGUIRE, ESQ. 9 FARA TABATABAI, ESQ. 10 11 12 13 14 15 16 17 18 19 20 21 22 23 24 25</p>	<p>1 2 3 4 5 IT IS HEREBY STIPULATED AND AGREED, by 6 and between the attorneys for the respective 7 parties herein, that filing and sealing be 8 and the same are hereby waived. 9 IT IS FURTHER STIPULATED AND AGREED 10 that all objections, except as to the form 11 of the question, shall be reserved to the 12 time of the trial. 13 14 15 IT IS FURTHER STIPULATED AND AGREED 16 that the within deposition may be sworn to 17 and signed before any officer authorized to 18 administer an oath, with the same force and 19 effect as if signed and sworn to before the 20 Court. 21 22 23 24 25</p>

Page 6	Page 7
<p>1 J. HUGHES</p> <p>2 MR. STERN: Before we begin, let me</p> <p>3 just state for the record a point that we</p> <p>4 have discussed off the record. Mr. Hughes</p> <p>5 is obviously a senior legal advisor to</p> <p>6 Barclays. By designating Mr. Hughes as a</p> <p>7 30(b)(6) representative to address certain</p> <p>8 topics, we do not intend to have Mr. Hughes</p> <p>9 testify to privileged communications.</p> <p>10 He will testify to facts that he</p> <p>11 learned from various sources, including in</p> <p>12 some instances from counsel. And that</p> <p>13 testimony concerning facts, even if facts</p> <p>14 learned from counsel, does not constitute a</p> <p>15 waiver of the attorney/client privilege.</p> <p>16 And if we can have an agreement on that</p> <p>17 premise, we can proceed.</p> <p>18 MR. MAGUIRE: I have no problem with</p> <p>19 that.</p> <p>20 MR. GAFFEY: That's fine with us.</p> <p>21 MR. KAY: Us as well.</p> <p>22 - - -</p> <p>23</p> <p>24</p> <p>25</p>	<p>1 J. HUGHES</p> <p>2 JONATHAN HUGHES,</p> <p>3 called as a witness by the Parties,</p> <p>4 having been duly sworn, testified as follows:</p> <p>5 EXAMINATION BY</p> <p>6 MR. MAGUIRE:</p> <p>7 Q. Mr. Hughes, good morning. As you</p> <p>8 know, I am Bill Maguire. I am going to be</p> <p>9 asking you some questions today. If any</p> <p>10 question is unclear, that may happen, let me</p> <p>11 know and we will try to clear it up.</p> <p>12 If you answer, we can assume that you</p> <p>13 understand the question?</p> <p>14 A. Absolutely.</p> <p>15 Q. If you need to take a break at any</p> <p>16 time, just let us know and we will find a</p> <p>17 convenient stopping point.</p> <p>18 A. Thank you.</p> <p>19 Q. I would like to start by asking you</p> <p>20 about the sale hearing, and that's the hearing</p> <p>21 that was held next door in the bankruptcy court</p> <p>22 on September 19, 2008. Did you attend that</p> <p>23 hearing?</p> <p>24 A. I did not.</p> <p>25 Q. Can you tell me who attended that</p>
Page 8	Page 9
<p>1 J. HUGHES</p> <p>2 hearing on behalf of Barclays?</p> <p>3 A. I think it included a number of</p> <p>4 Barclays employees and advisors. Those that I</p> <p>5 recall would include Michael Klein, who I think</p> <p>6 you know is an external advisor to Barclays; I</p> <p>7 think Archie Cox; Jason White, who is a member</p> <p>8 of the legal department at Barclays Capital.</p> <p>9 I think Alan Kaplan was there, too,</p> <p>10 another member of the legal department at</p> <p>11 Barclays Capital, and several representatives</p> <p>12 from Cleary Gottlieb, who were the principal</p> <p>13 legal advisors to Barclays Capital at the time,</p> <p>14 so including Lindsee Granfield and probably Vic</p> <p>15 Lewkow, L-E-W-K-O-W.</p> <p>16 There may have been more. I can't</p> <p>17 bring them to mind. I don't think there were</p> <p>18 any other Barclays employees there.</p> <p>19 Q. Any other advisors or representatives?</p> <p>20 A. I'm struggling to remember any more.</p> <p>21 There may have been.</p> <p>22 Q. In preparation for this deposition,</p> <p>23 did you take any steps to refresh or to gather</p> <p>24 any information as to who was present at the</p> <p>25 sale hearing?</p>	<p>1 J. HUGHES</p> <p>2 A. I did, yes.</p> <p>3 Q. What did you do?</p> <p>4 A. I spoke to a number of people,</p> <p>5 including those that I have mentioned, including</p> <p>6 other employees of Barclays, to try to establish</p> <p>7 whether, in fact, they were there.</p> <p>8 Q. And is there anyone else that you</p> <p>9 learned was present?</p> <p>10 A. I can't now recall any additional</p> <p>11 names.</p> <p>12 MR. STERN: Can we go off the record</p> <p>13 for just a second.</p> <p>14 MR. MAGUIRE: Certainly.</p> <p>15 (Discussion held off the record)</p> <p>16 MR. MAGUIRE: So counsel is just going</p> <p>17 to give us a list.</p> <p>18 MR. STERN: Yes. Mr. Hughes'</p> <p>19 recollection is correct, and in addition, in</p> <p>20 preparing for this deposition, we learned</p> <p>21 that for Barclays, Gerard LaRocca was</p> <p>22 present at the very beginning of the</p> <p>23 hearing, but he left early in anticipation</p> <p>24 of the possibility of needing to prepare for</p> <p>25 a closing.</p>

Page 10	Page 11
<p>1 J. HUGHES</p> <p>2 The individuals from Cleary were</p> <p>3 Victor Lewkow, Lindsee Granfield, Lisa</p> <p>4 Schweitzer, Joel Moss, Seth Kleinman.</p> <p>5 In addition, there were attorneys from</p> <p>6 Sullivan & Cromwell present, Rob Lacy, Jay</p> <p>7 Clayton, Hydee Feldstein, Elizabeth Summers,</p> <p>8 Ken Myers.</p> <p>9 And I believe that's the complete</p> <p>10 list.</p> <p>11 Q. Sir, what was Mr. Klein's role in</p> <p>12 attending the sale hearing?</p> <p>13 A. I'm not sure he had a specific role</p> <p>14 with respect to the hearing, but he had been,</p> <p>15 throughout the course of that week and in the</p> <p>16 period following the hearing, both an advisor to</p> <p>17 Barclays and also one of the principal</p> <p>18 negotiators of the transaction from the</p> <p>19 Barclays' perspective.</p> <p>20 Q. And what about Mr. Cox's role?</p> <p>21 A. Mr. Cox was also one of the principal</p> <p>22 negotiators of the transaction. So again, would</p> <p>23 have had an actual interest to be there.</p> <p>24 Q. And what about Mr. White?</p> <p>25 A. Mr. White was one of my colleagues in</p>	<p>1 J. HUGHES</p> <p>2 the legal function who was one of the legal</p> <p>3 advisors to Barclays on the transaction.</p> <p>4 Q. And is the same true of Mr. Kaplan?</p> <p>5 A. Correct.</p> <p>6 Q. Can you tell me what you have learned</p> <p>7 in terms of what explanations were made at the</p> <p>8 sale hearing off the record about the</p> <p>9 transaction?</p> <p>10 A. Are you asking me if I recall or if I</p> <p>11 have learned that there were some off-the-record</p> <p>12 descriptions of the transaction at the sale</p> <p>13 hearing?</p> <p>14 Q. Yeah. If I understood your earlier</p> <p>15 answers correctly, you weren't personally</p> <p>16 present.</p> <p>17 A. Correct.</p> <p>18 Q. The question is, what information does</p> <p>19 Barclays have as to what was said off the record</p> <p>20 at the sale hearing?</p> <p>21 A. Right. My understanding is that there</p> <p>22 was at one point in the proceedings an</p> <p>23 off-the-record description, as you say, provided</p> <p>24 to the assembled mass. Whether it was aimed at</p> <p>25 the entirety of the assembled mass of</p>
Page 12	Page 13
<p>1 J. HUGHES</p> <p>2 population, I don't know.</p> <p>3 I believe it did include a</p> <p>4 presentation, so to speak, of Weil Gotshal's</p> <p>5 meaningful thoughts about certain aspects of the</p> <p>6 transaction, and that that presentation -- or</p> <p>7 the presentation included representatives of</p> <p>8 Lehman, Weil Gotshal, the creditors committee,</p> <p>9 the trustee, and possibly others who were also</p> <p>10 in attendance.</p> <p>11 Q. And who gave that presentation?</p> <p>12 A. I believe it was Lori Fife who was a</p> <p>13 partner or is a partner at Weil Gotshal, I</p> <p>14 believe.</p> <p>15 Q. Anyone in addition to Ms. Fife?</p> <p>16 A. I don't think that I have ascertained</p> <p>17 with any certainty that anybody else made any</p> <p>18 representations. It's possible that there were</p> <p>19 other partners of Weil Gotshal that also</p> <p>20 participated in it. But the recollections are</p> <p>21 not all abundantly clear.</p> <p>22 Q. But the efforts that you have gone to</p> <p>23 as Barclays' designated 30(b)(6) representative</p> <p>24 are that Barclays is not aware of anyone else</p> <p>25 who spoke other than Ms. Fife in this</p>	<p>1 J. HUGHES</p> <p>2 off-the-record presentation?</p> <p>3 A. There are some recollections that</p> <p>4 Michael Klein may have also discussed certain</p> <p>5 aspects of the transaction with similar</p> <p>6 groupings. Whether it was part of that same</p> <p>7 presentation or whether it was different, I</p> <p>8 haven't been able to establish.</p> <p>9 Q. Anyone other than Ms. Fife and</p> <p>10 Mr. Klein?</p> <p>11 A. Not that I'm aware of.</p> <p>12 Q. Did you speak with Mr. Klein about any</p> <p>13 off-the-record discussion?</p> <p>14 A. I have spoken to Mr. Klein about that,</p> <p>15 yes.</p> <p>16 Q. And what did he tell you?</p> <p>17 A. I think it's fair to say his</p> <p>18 recollection was not precise, which is why a</p> <p>19 moment ago I mentioned that not all</p> <p>20 recollections were clear.</p> <p>21 Q. Can you tell me what is the best</p> <p>22 recollection that you were able to get as to</p> <p>23 what Mr. Klein had said?</p> <p>24 A. It is hard, it is hard to be clear</p> <p>25 about it, because I would be repeating what were</p>

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<p>1 J. HUGHES</p> <p>2 answers from Mr. Klein that weren't sufficiently</p> <p>3 certain for me to be able to represent exactly</p> <p>4 what it is that he had said.</p> <p>5 Q. If you could tell me what you were</p> <p>6 told. I understand there may be some</p> <p>7 uncertainties, but just tell me what it is that</p> <p>8 you were told about what he said, whether he</p> <p>9 told you or anybody else remembers him saying</p> <p>10 it.</p> <p>11 A. The best that I could say is that</p> <p>12 while Mr. Klein didn't have a strong</p> <p>13 recollection of the events, that the -- there</p> <p>14 was a recollection that he had referred to</p> <p>15 certain changes to some aspects of the</p> <p>16 negotiations that had happened earlier in the</p> <p>17 week, and that Mr. Klein had described some of</p> <p>18 those to people at court at that time, during</p> <p>19 that after -- late afternoon, early evening.</p> <p>20 Q. Who had that recollection?</p> <p>21 MR. STERN: Hold on for a second.</p> <p>22 I don't want you to intrude on the</p> <p>23 conversations that Mr. Hughes had in</p> <p>24 preparing for this deposition. You can ask</p> <p>25 him about the facts that he learned, but I</p>	<p>1 J. HUGHES</p> <p>2 don't think you're entitled to know who told</p> <p>3 him precisely what.</p> <p>4 So I'll allow you to testify to facts</p> <p>5 that you learned, as best you can recall</p> <p>6 them, but not to the conversations that you</p> <p>7 had in preparation for the deposition.</p> <p>8 MR. MAGUIRE: Well, I think it is a</p> <p>9 fact as to who has a recollection, so I</p> <p>10 think if the witness -- that's a factual</p> <p>11 thing. That's not a legal advice or</p> <p>12 opinion. So I think I am entitled to know</p> <p>13 who had the recollection.</p> <p>14 MR. STERN: So what is the question?</p> <p>15 Q. So the question is, when you testified</p> <p>16 about the recollection that somebody had, who</p> <p>17 was the person who had that recollection?</p> <p>18 MR. STERN: I'll allow you to answer</p> <p>19 that, if you remember.</p> <p>20 A. My best recollection is that Lindsee</p> <p>21 Granfield and Jason White recalled some form of</p> <p>22 discussion. That's about as much as I can</p> <p>23 remember from the various discussions that I</p> <p>24 have had on the topic.</p> <p>25 And as I say, those recollections were</p>
Page 16	Page 17
<p>1 J. HUGHES</p> <p>2 uncertain, and as you can observe, my own</p> <p>3 recollections are uncertain.</p> <p>4 Q. I just wanted to get the extent of</p> <p>5 what information you were able to get in that</p> <p>6 regard.</p> <p>7 A. I understand.</p> <p>8 Q. Did anyone recall what changes</p> <p>9 Mr. Klein referred to?</p> <p>10 A. Again, with the same proviso as to</p> <p>11 certainty, there were references to, principally</p> <p>12 references to agreements made earlier that</p> <p>13 Friday between Lehman Brothers and Barclays with</p> <p>14 respect to what was subsequently termed</p> <p>15 clearance box assets, as a very convenient</p> <p>16 summary label, and another convenient summary</p> <p>17 label, some 15c3 assets, each of which had been</p> <p>18 the topic of discussions throughout the course</p> <p>19 of the day.</p> <p>20 Q. And when you say with the same proviso</p> <p>21 as to certainty of recollection, what do you</p> <p>22 mean?</p> <p>23 A. I mean that because they were -- each</p> <p>24 of those items were thought to be part of what</p> <p>25 Mr. Klein may have described to people at court,</p>	<p>1 J. HUGHES</p> <p>2 and that those -- that very description was not</p> <p>3 certainly recollected that they are -- by</p> <p>4 definition, the content of the description was</p> <p>5 not certainly recollected.</p> <p>6 Q. Is what you gathered that certain</p> <p>7 people thought those two subjects are what</p> <p>8 Mr. Klein may have spoken about, or do they</p> <p>9 actually recall that he had spoken about each of</p> <p>10 those subjects?</p> <p>11 A. The latter.</p> <p>12 Q. And what did people recall him saying</p> <p>13 about clearance boxes?</p> <p>14 A. That there had been a discussion and</p> <p>15 an agreement about the clearance box assets, and</p> <p>16 most importantly, I think, that Lehman Brothers</p> <p>17 had represented to Barclays that there were</p> <p>18 assets in what were termed the clearance boxes,</p> <p>19 which assets were unencumbered assets of Lehman</p> <p>20 Brothers, which were earlier in the day</p> <p>21 identified as being capable of being delivered</p> <p>22 in the transaction to Barclays.</p> <p>23 Q. And who recalled Mr. Klein saying all</p> <p>24 that?</p> <p>25 A. The people that I have mentioned, so I</p>

Page 18	Page 19
<p>1 J. HUGHES</p> <p>2 think Lindsee Granfield and Jason White.</p> <p>3 Q. And did Lindsee Granfield and Jason</p> <p>4 White make clear to you that was a recollection,</p> <p>5 a clear recollection that they had?</p> <p>6 A. Again, as I said earlier, I wouldn't</p> <p>7 describe their recollections as certain</p> <p>8 recollections, but that was my impression.</p> <p>9 Q. I'm sorry. Your impression was --</p> <p>10 A. That they recalled, first of all, a</p> <p>11 description of some facets of the transaction by</p> <p>12 Mr. Klein, but -- and that that included</p> <p>13 reference to the clearance box assets.</p> <p>14 Q. Did they tell you who was present when</p> <p>15 Mr. Klein made his, I'll call it presentation?</p> <p>16 A. No. Save that they thought it took</p> <p>17 place at court.</p> <p>18 Q. Did anyone tell you that Mr. Klein</p> <p>19 referred to any other changes in the</p> <p>20 transaction?</p> <p>21 A. As I mentioned a moment ago, I think</p> <p>22 it included the 15c3 assets. I don't recall</p> <p>23 that it included anything else. So that's</p> <p>24 possible that it did, but I don't recall</p> <p>25 anything else.</p>	<p>1 J. HUGHES</p> <p>2 Q. Did anyone tell you that they recalled</p> <p>3 Mr. Klein saying anything about margin?</p> <p>4 A. No.</p> <p>5 Q. Did anyone tell you that they recalled</p> <p>6 Mr. Klein saying anything about clearing fund?</p> <p>7 A. No.</p> <p>8 Q. Is there anything else that anyone</p> <p>9 told you they recalled Mr. Klein saying at the</p> <p>10 sale hearing?</p> <p>11 A. Not that I recall.</p> <p>12 Q. Is there anything else that was --</p> <p>13 leaving aside Lori Fife's presentation for right</p> <p>14 now, is there anything else that you understand</p> <p>15 was said off the record in court other than what</p> <p>16 you have told us about Mr. Klein?</p> <p>17 A. No.</p> <p>18 Q. Can you tell us, please, what you</p> <p>19 understand Lori Fife said off the record?</p> <p>20 A. The best I've been able to establish</p> <p>21 is that Ms. Fife referred to some of her earlier</p> <p>22 descriptions with respect to the transaction, by</p> <p>23 which I mean descriptions made at the hearing</p> <p>24 which preceded the sale hearing, namely on the</p> <p>25 17th of September, and that she, both off the</p>
Page 20	Page 21
<p>1 J. HUGHES</p> <p>2 record and then subsequently on the record, made</p> <p>3 references to what were hers or Weil Gotshal's</p> <p>4 impressions relating to certain changes to the</p> <p>5 descriptions that had been made earlier at the</p> <p>6 September 17 hearing.</p> <p>7 Q. With respect to the descriptions at</p> <p>8 the earlier 17th hearing, that's with respect to</p> <p>9 the -- that included the description of the</p> <p>10 assets that Barclays was acquiring and the</p> <p>11 liabilities that it was assuming; is that</p> <p>12 correct?</p> <p>13 A. There was a description on the 17th, I</p> <p>14 believe, with respect to the transaction as a</p> <p>15 whole, and that that description included</p> <p>16 reference to certain assets and certain</p> <p>17 liabilities, yes.</p> <p>18 Q. And you understand that at the sale</p> <p>19 hearing on the 19th, Ms. Fife referred back to</p> <p>20 that?</p> <p>21 A. Yes. In part, yes.</p> <p>22 Q. Let's just focus on the part where she</p> <p>23 is referring back to the September 17 hearing.</p> <p>24 You understand that the -- Ms. Fife had earlier</p> <p>25 described the transaction as an acquisition, as</p>	<p>1 J. HUGHES</p> <p>2 including an acquisition by Barclays of</p> <p>3 70 billion dollars of long positions and the</p> <p>4 assumption of liabilities that had a book value</p> <p>5 that was described to the court on the 17th?</p> <p>6 A. I understand the description to have</p> <p>7 been first and foremost a description of the</p> <p>8 asset purchase agreement between Lehman Brothers</p> <p>9 and Barclays, which at its heart was an</p> <p>10 agreement pursuant to which Barclays was to</p> <p>11 acquire the whole of the North American business</p> <p>12 of Lehman Brothers, and any of the assets used</p> <p>13 in connection with that business.</p> <p>14 That rather broadly based transaction</p> <p>15 was qualified in a couple of respects, one of</p> <p>16 which was to recognize that certain assets were</p> <p>17 to be excluded and equally certain liabilities</p> <p>18 were to be excluded.</p> <p>19 Ms. Fife, I believe, did refer to and</p> <p>20 gave valuation numbers with respect to certain</p> <p>21 assets and certain liabilities.</p> <p>22 Q. I'm going to just focus on that part</p> <p>23 of your answer where the court was advised on</p> <p>24 the 17th about the book value of certain assets</p> <p>25 and certain liabilities. OK?</p>

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<p>1 J. HUGHES</p> <p>2 A. Um-hm.</p> <p>3 Q. Do you understand that Ms. Fife in her</p> <p>4 off-the-record presentation on the 19th referred</p> <p>5 back to the earlier disclosures to the court</p> <p>6 about the book values of the assets and the</p> <p>7 liabilities that were the subject of the</p> <p>8 acquisition?</p> <p>9 A. I believe she did that both off the</p> <p>10 record and on the record, yes.</p> <p>11 Q. And did her off-the-record discussion</p> <p>12 include a description that the values had</p> <p>13 changed from a book value that had been</p> <p>14 described to the court on the 17th to a book</p> <p>15 value on the 19th of 47.4 billion dollars?</p> <p>16 A. I do believe that she made reference</p> <p>17 to the 70 billion dollars of long positions, and</p> <p>18 that she also made a reference to a reduction in</p> <p>19 that number. It's not certain in my mind or I</p> <p>20 believe in Barclays' mind how she arrived at</p> <p>21 that different number, but I do believe she did</p> <p>22 present a different number, both in the</p> <p>23 off-the-record and in the on-the-record</p> <p>24 description.</p> <p>25 Q. In the off-the-record description, she</p>	<p>1 J. HUGHES</p> <p>2 also referred to a change in the book value of</p> <p>3 the liabilities that Barclays was assuming?</p> <p>4 A. Again, I think it is more accurate to</p> <p>5 state it that she referred to liabilities and</p> <p>6 gave a number with respect to those liabilities</p> <p>7 of I believe 45.5 billion, and that that was a</p> <p>8 different number from the number mentioned on</p> <p>9 the 17th.</p> <p>10 Again, what Ms. Fife -- the basis upon</p> <p>11 which Ms. Fife made those parts of her</p> <p>12 presentation, I couldn't -- I couldn't</p> <p>13 establish.</p> <p>14 Q. I am only asking you what she --</p> <p>15 whether she used that number and whether she</p> <p>16 was, in using that number, describing that it</p> <p>17 was a change in what had earlier been described</p> <p>18 as the book value of the liabilities that</p> <p>19 Barclays was assuming.</p> <p>20 A. I don't think it is apparent to</p> <p>21 Barclays either from the recollection of the</p> <p>22 people that were there or from my own review of</p> <p>23 the transcript that necessarily there was a</p> <p>24 direct correlation between or a direct match</p> <p>25 between the liabilities and the number described</p>
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<p>1 J. HUGHES</p> <p>2 and given on the 19th on the one hand and the</p> <p>3 liabilities and the number given and described</p> <p>4 on the 17th.</p> <p>5 Q. But in the off-the-record discussion,</p> <p>6 Ms. Fife did give values both for the book value</p> <p>7 of the assets and the liabilities, and they were</p> <p>8 consistent with what she later said then in open</p> <p>9 court on the record?</p> <p>10 A. I believe so, yes.</p> <p>11 Q. Is there anything else that you can</p> <p>12 tell us about what Ms. Fife said in the</p> <p>13 off-the-record discussion?</p> <p>14 A. I think there were certainly one or</p> <p>15 two additional points that I believe she made.</p> <p>16 First of all, I think she, and possibly others,</p> <p>17 by which I mean other representatives of Lehman</p> <p>18 Brothers in the form of Weil Gotshal partners,</p> <p>19 did remind the court both on and off the record</p> <p>20 that there was substantial uncertainty around</p> <p>21 the values and numbers that were being referred</p> <p>22 to, principally for two reasons.</p> <p>23 One, the difficulty throughout the</p> <p>24 course of the week that Lehman Brothers had had</p> <p>25 in establishing accuracy around such numbers and</p>	<p>1 J. HUGHES</p> <p>2 values, and as importantly, the presentation, as</p> <p>3 I think we all now know, took place at a time of</p> <p>4 remarkable uncertainty and difficulty with</p> <p>5 respect to the markets as a whole.</p> <p>6 The numbers that Ms. Fife referred to</p> <p>7 with respect to the long positions, I believe</p> <p>8 she also mentioned to the court that among the</p> <p>9 major reasons for the reduction in values with</p> <p>10 respect to those positions was the tremendous</p> <p>11 market events in the intervening period, by</p> <p>12 which I mean substantial amounts of those assets</p> <p>13 were no longer available to Lehman, and I think,</p> <p>14 in addition, the values of those assets had</p> <p>15 depleted materially.</p> <p>16 Q. In your last answer, was that based on</p> <p>17 the part of the proceeding at the sale hearing</p> <p>18 that was on the record and before the judge, or</p> <p>19 was it exclusively based on the off-the-record</p> <p>20 discussion?</p> <p>21 A. It's a reference to both discussions,</p> <p>22 but actually at least as much a reference to</p> <p>23 what she said on the record as off the record.</p> <p>24 Q. Is there anything you recall her</p> <p>25 saying off the record that she did not repeat on</p>

1 J. HUGHES
2 the record?
3 MR. STERN: I'll just object to the
4 form because it is not his specific
5 recollection. He is testifying to
6 information he has learned. He wasn't
7 present.
8 MR. MAGUIRE: Absolutely. Frankly --
9 MR. STERN: With that objection, you
10 can answer.
11 Q. So the record is clear, and we are all
12 on the same page, I'm asking you about something
13 where you weren't even present, so all of my
14 questions and I'm assuming all of your answers
15 today are going to be not just from your
16 personal knowledge but also informed by whatever
17 information Barclays has. Is that your
18 understanding?
19 A. Yes.
20 I don't recall any other aspect of the
21 presentation off the record that was not relayed
22 to the court on the record. And I'm not -- I
23 don't recall having been told by others of
24 anything that was described off the record that
25 was not also described on the record.

1 J. HUGHES
2 Q. You had quite a crew present at the
3 sale hearing. Are you aware of any
4 explanation -- let me take it first, any written
5 summary or explanation of what happened in court
6 that was transmitted to those who were not
7 present?
8 A. By a Barclays representative?
9 Q. Yeah.
10 A. No, I'm not aware of any such
11 description.
12 Q. Let me ask you about the
13 representations that were made to the court at
14 the sale hearing. Did you understand that the
15 representations that were made to the court
16 accurately described the deal?
17 A. I believe the descriptions were
18 accurate. I believe that most importantly,
19 representatives of Weil Gotshal described what
20 was the essence of the transaction, namely, the
21 acquisition by Barclays of the North American
22 business of Lehman Brothers.
23 I believe also that to the extent that
24 there was reference to any aspects of that
25 transaction, that it was essentially a fair and

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2 Q. And when you say you don't recall any
3 other aspect of the presentation, are you saying
4 in addition to what you understand Mr. Klein may
5 have said?
6 A. I'm referring to the presentations
7 that Lori Fife made.
8 Q. Yeah. What I wanted to find out,
9 frankly, is what Ms. Fife said off the record
10 that was not said to the court on the record.
11 Is there anything that you can point to that you
12 understand, that Barclays understands Ms. Fife
13 disclosed to everybody in court off the record
14 and then failed to disclose to the court on the
15 record?
16 A. I believe that Ms. Fife did not say
17 anything off the record that she did not also
18 say on the record.
19 Q. Thank you.
20 Are you aware of any description of
21 what happened in court that was prepared by
22 Barclays or relayed to other people within the
23 Barclays organization by any of those who
24 attended the hearing?
25 A. Sorry, could you repeat that.

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2 accurate description of what had been agreed.
3 Q. You understand that in the course of
4 the hearing, the court was advised that no cash
5 was being conveyed to Barclays?
6 A. That's not my understanding of what
7 was said at court. My understanding of what was
8 said at court with respect to cash -- and I
9 should just say as an aside that I assume we are
10 still talking about the hearing on the 19th?
11 Q. Absolutely.
12 A. There had at the hearing on the 17th
13 been reference to what I believe was described
14 as retained cash, and because in the intervening
15 period between the 17th and the 19th there had
16 been a change in this respect with respect to
17 the agreement, that the court was told that
18 there had been that change with respect to cash,
19 and that that retained cash was no longer in the
20 deal.
21 So I believe that the amounts
22 previously discussed were firstly 1.3 billion of
23 cash, which subsequently was reduced to
24 700 million, but that that cash was no longer in
25 the deal.

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<p>1 J. HUGHES</p> <p>2 Q. So is it your understanding that,</p> <p>3 other than the retained cash, cash was being</p> <p>4 conveyed to Barclays?</p> <p>5 MR. STERN: Objection to the form.</p> <p>6 You can answer if you understand it.</p> <p>7 A. I -- I'm not aware of any other</p> <p>8 discussions specifically with reference -- that</p> <p>9 referenced cash prior to discussions with</p> <p>10 respect to the 15c3 asset that I otherwise --</p> <p>11 that I mentioned earlier.</p> <p>12 Q. Again, limiting everything just to the</p> <p>13 sale hearing, is it Barclays' understanding that</p> <p>14 what was said to the court concerning cash at</p> <p>15 the sale hearing was accurate?</p> <p>16 A. I believe it was accurate, because it</p> <p>17 was a reference to discussions and changes with</p> <p>18 respect to an earlier agreement relating to what</p> <p>19 I have said was referred to as retained cash. I</p> <p>20 do believe that the court heard a fair and</p> <p>21 accurate description of how that part of the</p> <p>22 negotiation between Lehman and Barclays had</p> <p>23 changed.</p> <p>24 Q. You know that in the course of the</p> <p>25 hearing, Ms. Fife described how Barclays was</p>	<p>1 J. HUGHES</p> <p>2 acquiring 47.4 billion dollars of assets. Is</p> <p>3 Barclays' understanding that that was an</p> <p>4 accurate representation?</p> <p>5 MR. STERN: Objection to the form.</p> <p>6 A. As you have put the question, I</p> <p>7 understand you to be asking me whether a -- let</p> <p>8 me start again.</p> <p>9 Your question, if I may say, raises</p> <p>10 two points. One, was Ms. Fife's use of the</p> <p>11 47.4 number accurate, and two, was it -- if it</p> <p>12 was, was it an accurate description of the</p> <p>13 assets that were to be acquired in the</p> <p>14 transaction.</p> <p>15 My belief -- and I think -- and</p> <p>16 Barclays' belief is that the reference to 47.4</p> <p>17 was a reference by Ms. Fife to assets which had</p> <p>18 previously been described as long positions in</p> <p>19 the 17th hearing. It is also possible that it</p> <p>20 included other assets.</p> <p>21 Nobody at Barclays had any discussions</p> <p>22 with Ms. Fife about the composition of that 47.4</p> <p>23 number. But it is clear and always was clear to</p> <p>24 Barclays, and I believe also to Lehman Brothers</p> <p>25 and Ms. Fife, that there were significant assets</p>
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<p>1 J. HUGHES</p> <p>2 in addition that were also part of the agreement</p> <p>3 and indeed part of the business of Lehman</p> <p>4 Brothers, which, as I have said, was really the</p> <p>5 heart of the transaction.</p> <p>6 So I believe there were, and I believe</p> <p>7 the court was otherwise informed, both on the</p> <p>8 17th and on the 19th, that Barclays was</p> <p>9 acquiring all of the assets of the Lehman</p> <p>10 Brothers businesses, and that included any</p> <p>11 assets used in connection with those businesses.</p> <p>12 The 47.4, as I said, I believe, was a</p> <p>13 reference to the earlier described long</p> <p>14 positions that you asked me about a few moments</p> <p>15 ago. But I believe it was both in detail and in</p> <p>16 broad terms a fair and accurate description to</p> <p>17 the court of what the transaction was all about.</p> <p>18 Q. What are the significant assets in</p> <p>19 addition to what Ms. Fife described as the 47.4</p> <p>20 billion? What are the significant assets in</p> <p>21 addition that you referred to in your last</p> <p>22 answer?</p> <p>23 A. I'm not sure I can recount every one.</p> <p>24 I think there were, in the asset purchase</p> <p>25 agreement, roughly 18 or maybe 19 categories of</p>	<p>1 J. HUGHES</p> <p>2 assets. Included among them were buildings,</p> <p>3 people, the as yet to be defined or valued other</p> <p>4 assets in the business, and there was an</p> <p>5 enormous amount of uncertainty about those</p> <p>6 values.</p> <p>7 It included all of the exchange-traded</p> <p>8 derivatives business, all of the capital markets</p> <p>9 business, and other aspects of the Lehman</p> <p>10 business in the Americas, which I think were set</p> <p>11 out in the asset purchase agreement.</p> <p>12 I'm not sure that's an exhaustive</p> <p>13 answer, but it certainly included each of those</p> <p>14 items that I have mentioned.</p> <p>15 Q. What about the 15c3 asset?</p> <p>16 A. It certainly included the 15c3 assets.</p> <p>17 It included the clearance box assets. Not least</p> <p>18 because they were also all assets in -- held by</p> <p>19 Lehman Brothers in -- and used in connection</p> <p>20 with Lehman Brothers' bid in North America.</p> <p>21 Q. When we talk about the significant</p> <p>22 assets in addition to what Ms. Fife described as</p> <p>23 the 47.4 billion, you say there are 18 or 19</p> <p>24 categories, starting with buildings, personnel,</p> <p>25 exchange-traded derivatives business and</p>

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including the 15c3 asset and the clearance box?

A. Yeah, I don't view any of them as additional assets. I view them as identified assets in the business. I think there is a difference, or at least I view it as a difference.

Q. When you say identified assets, what do you mean?

A. I mean that the agreement in the APA was to -- was for Barclays to acquire all of the assets used in connection with Lehman Brothers' business. So it was from certainly the 15th -- no later than the 15th of September onwards, an agreement to acquire the business of Lehman Brothers.

It was deliberately not ever described, approached or otherwise discussed as a balance sheet deal, referring to the acquisition of specific assets. There was, during the course of the week of the 15th to the 22nd, a lot of discussion about particular assets within the business and how those might be best identified.

So when I use the term "identified"

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rather than "additional," it's because I think it is important to understand that the deal was about the business as a whole, with some limitations, as I mentioned a while ago, with respect to excluded assets. And that's why the asset purchase agreement described purchased assets in the way that it did.

So there was, from time to time, during the course of that week, specific reference to particular assets that had been identified in the discussion and in the negotiations. So for example, the clearance box assets and the 15c3 assets were not identified by Lehman Brothers as assets in the business available to be transferred until, you know, probably sometime on Friday, which was the 19th.

So to refer to each of these different assets as additional assets, I think is something of an inaccuracy. I think Barclays viewed them as identified, and there were certainly discussions about the particularities of the transaction in that way.

Q. It was Barclays' understanding that the clearance box and 15c3 assets were always

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part of the deal because they were part of the business; is that right?

A. I think by definition, they were part of the business of Lehman Brothers and were -- while they had not been discussed or specifically identified before Friday, I think they were by definition purchased assets.

Q. So -- I understand. So they were all covered by the original APA?

A. Correct.

Q. All the assets we have been discussing, I understand it is Barclays' understanding that they were all part of the business and part of the original APA; is that right?

A. I think that's right, yes.

Q. Now, let me just ask you to break it up into two parts. One is, which of those various assets did you understand were part of the 47.4 billion and which did you understand were not part of the 47.4?

A. I think I said earlier that I do not know how Ms. Fife arrived at that 47.4 number. So I'm not in a position to tell you what that

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number comprised.

Q. And is Barclays in a position to provide any understanding as to what it believed comprised the 47.4 billion dollars that was represented to the court at the sale hearing?

MR. STERN: Objection to the form.

Are you talking about speculation or --

MR. MAGUIRE: No. I'm asking him did Barclays have an understanding at the sale hearing.

MR. STERN: I thought he has already answered that, but go ahead.

A. My understanding was that Ms. Fife was describing or explaining to the court changes in the valuations of long positions which she previously described. Whether that was a description by Ms. Fife that was limited to that, I don't know.

Q. And your preparation for this deposition has not shed any additional light on that from the people you have spoken to at Barclays?

A. From the people I have spoken to at Barclays, their recollections are consistent

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<p>1 J. HUGHES</p> <p>2 with what I have just said. I have not had the</p> <p>3 opportunity to speak to Ms. Fife or Mr. Miller,</p> <p>4 so I can't say with certainty what was in her</p> <p>5 mind when she presented the number.</p> <p>6 Q. I'm only asking for Barclays'</p> <p>7 understanding.</p> <p>8 MR. STERN: Should we take a short</p> <p>9 break for five minutes? Do you want to</p> <p>10 finish a line of questions?</p> <p>11 MR. MAGUIRE: That's fine, we can take</p> <p>12 a break now. Now is fine.</p> <p>13 (Recess)</p> <p>14 BY MR. MAGUIRE:</p> <p>15 Q. Sir, is Barclays aware of any</p> <p>16 disclosure to the court of any profit or gain</p> <p>17 that Barclays anticipated it would make from the</p> <p>18 sale transaction?</p> <p>19 MR. STERN: Are you talking about</p> <p>20 September 19?</p> <p>21 MR. MAGUIRE: Yes.</p> <p>22 A. On September the 19th, I'm not aware</p> <p>23 of anybody identifying to the court a gain, nor</p> <p>24 am I aware that anybody who made any</p> <p>25 representations to the court was in a position</p>	<p>1 J. HUGHES</p> <p>2 to know one way or another whether Barclays</p> <p>3 would have had a gain.</p> <p>4 I do think there were objections at</p> <p>5 that hearing based on the notion that Barclays</p> <p>6 would make a windfall profit from the</p> <p>7 transaction. There were some meaningful</p> <p>8 complaints, for want of a better word, made on</p> <p>9 behalf of creditors, I believe, that identified</p> <p>10 to the court a strong likelihood that Barclays</p> <p>11 would make what in their description was a</p> <p>12 windfall profit, and I believe that the judge</p> <p>13 heard those complaints and dismissed them as</p> <p>14 being insignificant in light of the importance</p> <p>15 of the transaction and the importance of</p> <p>16 approving the transaction, among other things,</p> <p>17 for the benefit of the estate, creditors,</p> <p>18 customers.</p> <p>19 And I believe also that the court felt</p> <p>20 that it was not relevant whether or not that</p> <p>21 windfall profit did or did not exist. Even if</p> <p>22 it did, I think that the judge explained that</p> <p>23 there was a greater need in light of the turmoil</p> <p>24 in the markets at that point in time. But as I</p> <p>25 mentioned, in particular for the benefit of the</p>
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<p>1 J. HUGHES</p> <p>2 estate and the creditors.</p> <p>3 Q. At the time of the sale hearing, did</p> <p>4 Barclays expect to make a gain on the closing of</p> <p>5 the transaction?</p> <p>6 A. Sorry, could you just repeat, at which</p> <p>7 point in time?</p> <p>8 Q. At the sale hearing.</p> <p>9 A. At the sale hearing, yes, I believe</p> <p>10 so. I believe in fact we had even made the</p> <p>11 public announcement that we would make a -- that</p> <p>12 we expected to make a meaningful accounting gain</p> <p>13 on the transaction.</p> <p>14 Q. And when you say the public</p> <p>15 announcement, you are referring to the</p> <p>16 announcement and analyst call on the 17th?</p> <p>17 A. Yes.</p> <p>18 Q. In the course of that analyst call,</p> <p>19 Mr. Varley described the deal as having been</p> <p>20 derisked. Do you recall that?</p> <p>21 A. I don't recall that specific term, no.</p> <p>22 Q. Did Barclays understand the sale to</p> <p>23 have been derisked?</p> <p>24 A. I'm not sure I understand what you</p> <p>25 mean by derisked.</p>	<p>1 J. HUGHES</p> <p>2 Q. Did you participate in the analyst</p> <p>3 call?</p> <p>4 A. No, no, I did not.</p> <p>5 Q. I'll represent to you that on the</p> <p>6 call, Mr. Varley said, and I quote, "What we</p> <p>7 have taken is a portfolio of trading assets and</p> <p>8 liabilities that are first of all derisked, and</p> <p>9 secondly, those that need to support the ongoing</p> <p>10 parts of the business that we have acquired."</p> <p>11 Is it Barclays' understanding that</p> <p>12 that was a true and correct statement?</p> <p>13 MR. STERN: I am going to object. I</p> <p>14 think you can ask your questions however you</p> <p>15 want, Bill, but I think in fairness to the</p> <p>16 witness, if you are going to quote from</p> <p>17 something, he should be allowed to review</p> <p>18 it.</p> <p>19 But subject to that, if you can</p> <p>20 answer.</p> <p>21 A. I've no reason to believe that what</p> <p>22 Mr. Varley may have said was inaccurate. I</p> <p>23 haven't spoken to Mr. Varley about that or</p> <p>24 indeed any portion of his involvement in order</p> <p>25 to prepare for this deposition.</p>

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<p>1 J. HUGHES</p> <p>2 From the extract -- I assume it is an</p> <p>3 extract, what you have just read to me, it would</p> <p>4 appear that that was one or a series of comments</p> <p>5 with respect to parts of a greater whole, namely</p> <p>6 a larger transaction.</p> <p>7 Q. Did you understand that the</p> <p>8 transaction had been derisked?</p> <p>9 MR. STERN: Objection to the form.</p> <p>10 A. The trans- -- if by the transaction</p> <p>11 you mean the acquisition of the businesses, the</p> <p>12 North American businesses of Lehman Brothers,</p> <p>13 and that -- using the term "derisked," you mean</p> <p>14 there was no risk in the transaction, no, I did</p> <p>15 not understand it to mean that.</p> <p>16 Q. In what sense did Barclays not derisk</p> <p>17 the transaction?</p> <p>18 A. The assets and liabilities in the</p> <p>19 transaction and substantial portions of the</p> <p>20 business of Lehman Brothers were incredibly</p> <p>21 uncertain, both in terms of definition and</p> <p>22 value. So there was, I think, enormous risk in</p> <p>23 the transaction throughout its negotiation and</p> <p>24 indeed following the closing of the transaction.</p> <p>25 There was enormous risk to Barclays in</p>	<p>1 J. HUGHES</p> <p>2 my view. There were enormous risks that the</p> <p>3 people, for example, who we hoped would come</p> <p>4 along with that business may or may not have</p> <p>5 come along, either on day one or stayed on day</p> <p>6 two.</p> <p>7 There was incredible uncertainty</p> <p>8 around the valuation of all of the assets, which</p> <p>9 is one of the reasons why there were no specific</p> <p>10 numbers represented or warranted in the</p> <p>11 transaction to be the actual numbers. I believe</p> <p>12 that's part of the reason also why there was no</p> <p>13 explanation to the court at any time that there</p> <p>14 was any certainty with respect to any of those</p> <p>15 numbers.</p> <p>16 And indeed, there was clearly during</p> <p>17 the course of that week almost unending</p> <p>18 possibility to establish that there was risk in</p> <p>19 any valuation of any asset or any liability.</p> <p>20 So I think that there was always,</p> <p>21 during the course of that week of negotiations</p> <p>22 and in the period following, significant risk to</p> <p>23 Barclays.</p> <p>24 Q. With respect to the liabilities, what</p> <p>25 was the greatest risk that Barclays understood?</p>
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<p>1 J. HUGHES</p> <p>2 MR. STERN: Objection to the form.</p> <p>3 A. I don't think we ever have assessed</p> <p>4 the liabilities in the sense of valuing one</p> <p>5 specifically as compared to another. There are</p> <p>6 certainly -- there has certainly been work done</p> <p>7 by -- principally by our finance department to</p> <p>8 establish assets, assets and liability</p> <p>9 valuations, both during the course of the week</p> <p>10 and thereafter.</p> <p>11 So I don't think we have got to the</p> <p>12 point of identifying the top ten liabilities and</p> <p>13 what they may actually look like. There were</p> <p>14 clearly substantial liabilities of varying</p> <p>15 types.</p> <p>16 Q. Did Barclays ever identify any</p> <p>17 particular -- any specific single exposure that</p> <p>18 it felt was the greatest from among the various</p> <p>19 liabilities that it was assuming in this</p> <p>20 transaction?</p> <p>21 MR. STERN: You're talking about</p> <p>22 before the closing or --</p> <p>23 Q. Yeah, anytime before the closing, did</p> <p>24 Barclays say, this particular liability could</p> <p>25 blow us up?</p>	<p>1 J. HUGHES</p> <p>2 MR. STERN: Objection, objection to</p> <p>3 the form.</p> <p>4 But you can answer.</p> <p>5 A. I think Barclays was extremely</p> <p>6 concerned about the -- about a number of</p> <p>7 liabilities, included among which were the</p> <p>8 assets in the repo transaction, the unknown or</p> <p>9 unidentified size of liabilities with respect to</p> <p>10 the exchange-traded derivatives business. There</p> <p>11 were concerns about the liabilities that we took</p> <p>12 on with respect to employees, with respect to</p> <p>13 the buildings.</p> <p>14 So I think it is fair to say that all</p> <p>15 of the liabilities that were identified were</p> <p>16 items of concern because, first and foremost,</p> <p>17 there had been -- there was no ability to</p> <p>18 establish whether representations made by Lehman</p> <p>19 Brothers with respect to each and every one of</p> <p>20 those liabilities was accurate or not, and as I</p> <p>21 think I mentioned, it was a period in which</p> <p>22 valuations, prices were changing, essentially</p> <p>23 all the time. And there was -- the degree of</p> <p>24 volatility during that period was so extreme,</p> <p>25 that I think it would have been surprising to</p>

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<p>1 J. HUGHES</p> <p>2 anybody if anybody at that point had been sure</p> <p>3 about the liabilities that were being taken on.</p> <p>4 So I think Barclays was at all times</p> <p>5 very concerned about the size or impact of each</p> <p>6 of the key categories of liabilities in the</p> <p>7 transaction.</p> <p>8 Q. I would like to focus on just one of</p> <p>9 those, and that's the, what you describe as the</p> <p>10 unknown and unidentified size of the liabilities</p> <p>11 in the exchange-traded derivatives business. So</p> <p>12 my next questions will just focus on that.</p> <p>13 A. Yup.</p> <p>14 Q. What did Barclays understand was its</p> <p>15 total exposure in taking on the exchange-traded</p> <p>16 derivatives business?</p> <p>17 A. I think at the time, we agreed with</p> <p>18 Lehman Brothers that we would acquire all of the</p> <p>19 exchange-traded derivatives business. First of</p> <p>20 all, it was right at the beginning of the</p> <p>21 discussion, by which I mean very early in the</p> <p>22 week of September 15th, and I think at that</p> <p>23 point in time, and indeed for an appreciable</p> <p>24 period following the closing, not only was</p> <p>25 Lehman Brothers unable to represent to us what</p>	<p>1 J. HUGHES</p> <p>2 the extent of the assets and liabilities were,</p> <p>3 Barclays was also not in the position to</p> <p>4 establish for itself what the extent of those</p> <p>5 assets and liabilities were.</p> <p>6 Q. What was the worst, what was Barclays'</p> <p>7 worst case in terms of what it was facing as its</p> <p>8 total exposure on the exchange-traded</p> <p>9 derivatives business?</p> <p>10 A. Again, at that point in time we were</p> <p>11 not in a position to establish the extent of</p> <p>12 such an exposure. It was partly for that reason</p> <p>13 that it was made clear that we had to take all</p> <p>14 of the assets together with all of the</p> <p>15 liabilities, which included any property or</p> <p>16 any -- of any sort or description that was being</p> <p>17 held to secure or to support or was being used</p> <p>18 in the business of managing that exchange-traded</p> <p>19 derivatives exposure.</p> <p>20 Q. Did anyone at Barclays get a handle on</p> <p>21 whether the total maximum exposure in taking on</p> <p>22 that business was a particular figure? 1</p> <p>23 billion, 10 billion, 100 billion?</p> <p>24 MR. STERN: Objection, asked and</p> <p>25 answered.</p>
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<p>1 J. HUGHES</p> <p>2 A. At what point in time?</p> <p>3 Q. Prior to the closing.</p> <p>4 A. I don't think that prior to the</p> <p>5 closing Barclays had any ability to conclude any</p> <p>6 work on that point.</p> <p>7 Q. And did the negotiators for Barclays</p> <p>8 have authority to enter into the deal and close</p> <p>9 the transaction without getting a handle on what</p> <p>10 the total maximum exposure was on the</p> <p>11 exchange-traded derivatives business?</p> <p>12 A. Can you define what you mean by get a</p> <p>13 handle on?</p> <p>14 Q. Limit the -- get an understanding as</p> <p>15 to what the maximum exposure to the company was</p> <p>16 by taking on this business. Whatever that</p> <p>17 number was, at least say it can be no worse than</p> <p>18 this?</p> <p>19 A. I think your question was, were</p> <p>20 representatives of Barclays authorized to</p> <p>21 conclude the transaction, without getting a</p> <p>22 handle on.</p> <p>23 I don't think that the authority</p> <p>24 either expressly or impliedly delegated to the</p> <p>25 Barclays representatives at any point would have</p>	<p>1 J. HUGHES</p> <p>2 or did refer to that particular assessment. I</p> <p>3 believe that the Barclays representatives at the</p> <p>4 time were authorized to agree to acquire the</p> <p>5 whole of the exchange-traded derivatives</p> <p>6 business of Lehman Brothers, and that it was</p> <p>7 reasonable in so doing for those representatives</p> <p>8 to determine as best they could that if we were</p> <p>9 to acquire all of the assets of the</p> <p>10 exchange-traded derivatives business, that we</p> <p>11 would also include in that any property which</p> <p>12 was in part designed to limit exposures with</p> <p>13 respect to those businesses.</p> <p>14 So for example, if there were open</p> <p>15 exchange-traded derivatives positions on any</p> <p>16 futures or options exchange, there would</p> <p>17 necessarily have been assets held in connection</p> <p>18 with those open positions to secure and to</p> <p>19 support the exposure either in those particular</p> <p>20 positions or with respect to other aspects of</p> <p>21 that business.</p> <p>22 So I believe that because all of the</p> <p>23 assets of any description and of any type were</p> <p>24 to -- were part of what was identified to be</p> <p>25 transferred in the transaction, that it was a</p>

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<p>1 J. HUGHES</p> <p>2 reasonable assessment on the part of the</p> <p>3 Barclays representatives to take -- to reach</p> <p>4 that agreement with Lehman Brothers or that part</p> <p>5 of the agreement with Lehman Brothers.</p> <p>6 There was, in any event, I guess,</p> <p>7 residual risk in that assessment.</p> <p>8 Q. Did anyone tell the Barclays board</p> <p>9 that it's people had been unable to quantify the</p> <p>10 maximum exposure to Barclays in taking on the</p> <p>11 exchange-traded derivatives business?</p> <p>12 MR. STERN: One second. I'm just not</p> <p>13 sure what topic this relates to. I'm also</p> <p>14 concerned that this may call for privileged</p> <p>15 communications.</p> <p>16 MR. MAGUIRE: I am only looking for</p> <p>17 the facts of the disclosure, and we are</p> <p>18 clearly talking about the gain. I</p> <p>19 understand that in disclosing the gain, any</p> <p>20 contingency would be an issue there. So it</p> <p>21 is simply a factual question. I'm not</p> <p>22 looking for any legal advice.</p> <p>23 MR. STERN: I am trying to figure out</p> <p>24 what topic this.</p> <p>25 MR. MAGUIRE: Actually, it's on a</p>	<p>1 J. HUGHES</p> <p>2 number of topics, but right now I think it</p> <p>3 is --</p> <p>4 MR. STERN: I am going to allow it. I</p> <p>5 am not going to be overly strict about that,</p> <p>6 but -- OK.</p> <p>7 Q. Again, I'm not interested in any legal</p> <p>8 advice. I am just asking whether there was a</p> <p>9 disclosure to the Barclays board as to the fact</p> <p>10 that it was unable to quantify the maximum</p> <p>11 exposure involved in taking on the derivatives</p> <p>12 business?</p> <p>13 A. I am not aware of specific comments</p> <p>14 made to the board with respect to an inability</p> <p>15 to assess the exposures you referred to. I am</p> <p>16 aware that there were, on a number of different</p> <p>17 topics, and I believe with respect to the</p> <p>18 transaction as a whole, comments, as I say, and</p> <p>19 descriptions to the board, among others, of how</p> <p>20 uncertain all of the valuations were in this</p> <p>21 transaction and there could at no point be any</p> <p>22 absolute certainty about estimated values.</p> <p>23 None of the -- most if -- most of the</p> <p>24 valuations with respect to particular assets, to</p> <p>25 the extent that we had them, were received from</p>
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<p>1 J. HUGHES</p> <p>2 Lehman Brothers in the bizarre market</p> <p>3 circumstances that I have already described, and</p> <p>4 so it was very clear to the board of Barclays</p> <p>5 and indeed I believe to the board of Lehman</p> <p>6 Brothers and anybody involved in the transaction</p> <p>7 at all that there was no certainty with respect</p> <p>8 to estimations of valuations, and therefore,</p> <p>9 with respect to the estimations of what the</p> <p>10 exposure to Barclays may be.</p> <p>11 I believe that the representatives of</p> <p>12 Barclays who were involved in the discussions</p> <p>13 with respect to particular assets, be they</p> <p>14 exchange-traded derivatives or otherwise, made</p> <p>15 their best effort at the time to estimate what</p> <p>16 those exposures might be, and made those</p> <p>17 estimations recognizing that it was certainly</p> <p>18 fundamental to Barclays to insure that there was</p> <p>19 sufficient comfort that we would gain more value</p> <p>20 than ultimately we would liabilities, primarily</p> <p>21 because it was important to the bank to insure</p> <p>22 that in capital terms, this was not a negative</p> <p>23 transaction for the bank and its shareholders.</p> <p>24 Q. My last question was specific to the</p> <p>25 liabilities involved in the exchange-traded</p>	<p>1 J. HUGHES</p> <p>2 derivatives. I am going to ask you a slightly</p> <p>3 broader question now that is specific to all of</p> <p>4 the liabilities.</p> <p>5 Are you aware of whether the board was</p> <p>6 told that Barclays was unable to quantify the</p> <p>7 maximum exposure to the company from the</p> <p>8 liabilities it was assuming in this transaction?</p> <p>9 A. I'm not aware of a communication in</p> <p>10 those terms. I believe that the board was given</p> <p>11 some estimated values with respect to</p> <p>12 liabilities of one form or another, and again, I</p> <p>13 believe the board was told that there was no</p> <p>14 certainty with respect to those valuations.</p> <p>15 Q. Did the board -- is it your position</p> <p>16 that the board understood that Barclays could</p> <p>17 not quantify the maximum exposure of the</p> <p>18 liabilities it was assuming in this deal?</p> <p>19 MR. STERN: Objection to the form.</p> <p>20 A. Could you repeat the question.</p> <p>21 Q. Yeah. The question is, while somebody</p> <p>22 may not have said specifically that --</p> <p>23 specifically told the board that the company</p> <p>24 couldn't quantify the maximum exposure of the</p> <p>25 liabilities it was assuming, is it your</p>

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<p>1 J. HUGHES</p> <p>2 understanding that the board understood that</p> <p>3 without having to be told that specific fact?</p> <p>4 MR. STERN: Objection to the form.</p> <p>5 A. I'm not sure I could say what the</p> <p>6 board understood. I believe that the board was</p> <p>7 told that the representatives of Barclays</p> <p>8 responsible for negotiating the transaction had</p> <p>9 done their best to estimate what the assets and</p> <p>10 liabilities within the transaction were worth or</p> <p>11 what their proper values were. But that that</p> <p>12 was, as I say, an estimation.</p> <p>13 So I believe that it was clear to the</p> <p>14 board at the time from the representations made</p> <p>15 by Barclays employees that in the time available</p> <p>16 and in the circumstances again that I have</p> <p>17 mentioned, Barclays had tried to estimate what</p> <p>18 those values were, but couldn't be absolutely</p> <p>19 sure.</p> <p>20 Q. I've been asking you about disclosures</p> <p>21 that were made to the board, and I'll broaden</p> <p>22 that a little bit now to senior management. Are</p> <p>23 you aware of any disclosures to members of</p> <p>24 senior management that Barclays was unable to</p> <p>25 quantify the maximum exposure of assuming the</p>	<p>1 J. HUGHES</p> <p>2 liabilities in this transaction?</p> <p>3 A. When you say senior management, are</p> <p>4 you excluding the board? Because the board is</p> <p>5 not management.</p> <p>6 Q. Yeah, I am excluding the board.</p> <p>7 A. Right.</p> <p>8 Again, I'm not aware of a disclosure</p> <p>9 in the specific terms that you describe. It was</p> <p>10 made clear on several occasions to senior</p> <p>11 management that it was very difficult for</p> <p>12 Barclays to conclude with certainty values with</p> <p>13 respect to both assets and liabilities in the</p> <p>14 transaction.</p> <p>15 But I think senior management was</p> <p>16 given enough inputs that it was reasonable for</p> <p>17 it to conclude that it was acquiring or it was</p> <p>18 concluding a transaction which ultimately would</p> <p>19 be positive for the bank.</p> <p>20 Q. And how was management able to make</p> <p>21 that conclusion without quantifying what the</p> <p>22 risk was of taking on the exchange-traded</p> <p>23 derivatives business?</p> <p>24 A. I think it was able to do it by</p> <p>25 estimating and making judgments about the risk</p>
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<p>1 J. HUGHES</p> <p>2 associated with those estimations, which is</p> <p>3 different from an absolute quantification.</p> <p>4 Q. And how did it do that?</p> <p>5 A. I -- how did it, "it" meaning --</p> <p>6 Q. How did management make that</p> <p>7 assessment?</p> <p>8 A. Fundamentally by taking</p> <p>9 representations of value from Lehman Brothers</p> <p>10 and where we were -- where Barclays was able to</p> <p>11 make its own judgments as to those valuations</p> <p>12 and reach conclusions off the back of that</p> <p>13 analysis.</p> <p>14 You mentioned exchange-traded</p> <p>15 derivatives. I don't think that prior to</p> <p>16 closing we had been given -- I may be wrong</p> <p>17 about this -- it is possible there had been some</p> <p>18 numbers discussed, but I don't think that there</p> <p>19 was -- that it was clear at the time of closing</p> <p>20 what the quantification of the assets and</p> <p>21 liabilities may have been with respect to the</p> <p>22 exchange-traded derivatives business itself.</p> <p>23 Q. So with respect to that business, how</p> <p>24 was it reasonable for management to make the</p> <p>25 conclusion that it was in Barclays' interest to</p>	<p>1 J. HUGHES</p> <p>2 take on that business?</p> <p>3 A. Primarily because it was acquiring all</p> <p>4 of -- any type of asset of whatever form that</p> <p>5 was held in connection with that business. And</p> <p>6 I think there both were and are sufficient</p> <p>7 numbers of expert people in the Barclays</p> <p>8 organization to make an assessment about the way</p> <p>9 the futures and options business is conducted,</p> <p>10 such that if all of the assets that were held in</p> <p>11 connection with that business were going to be a</p> <p>12 part of the deal and come to Barclays, that</p> <p>13 there would be a reasonable risk and a</p> <p>14 reasonable estimation of risk to reach the</p> <p>15 conclusion we did.</p> <p>16 Q. And that's the piece I'm missing. How</p> <p>17 was management able to come to that conclusion</p> <p>18 that the assets would basically cover the</p> <p>19 liabilities if they weren't able to quantify</p> <p>20 what the liabilities were?</p> <p>21 MR. STERN: Let me hear that again.</p> <p>22 (Record read)</p> <p>23 MR. STERN: I may be missing it in the</p> <p>24 topics, but I'm just not sure where that</p> <p>25 fits.</p>

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<p>1 J. HUGHES</p> <p>2 MR. MAGUIRE: I think we are well into</p> <p>3 a discussion, and we are simply following up</p> <p>4 on the witness' answer.</p> <p>5 MR. STERN: No, no, no.</p> <p>6 MR. MAGUIRE: If you want to make an</p> <p>7 objection or you want to direct the witness</p> <p>8 not to answer, Jack, that's fine. I'm</p> <p>9 not -- just so you know, I am not going to</p> <p>10 spend the day referring you back and forth</p> <p>11 to topics in the notice.</p> <p>12 So I leave it to you. If you think</p> <p>13 there is something inappropriate and you</p> <p>14 want to take a position, then by all means,</p> <p>15 but the proper way to do that is to direct</p> <p>16 the witness not to --</p> <p>17 MR. STERN: No, no. I am not trying</p> <p>18 to be difficult, Bill. All I'm trying to do</p> <p>19 is to clarify if you are asking Mr. Hughes</p> <p>20 to testify to something he is prepared on</p> <p>21 for this deposition or if you are asking</p> <p>22 about his own personal knowledge aside from</p> <p>23 his preparation. But I'm not trying to be</p> <p>24 difficult.</p> <p>25 I'll allow you to answer this. I'm</p>	<p>1 J. HUGHES</p> <p>2 just not sure that this is a 30(b)(6) topic</p> <p>3 here.</p> <p>4 So if you could repeat the question.</p> <p>5 (Record read)</p> <p>6 MR. STERN: I'll object and I think it</p> <p>7 is asked and answered as well.</p> <p>8 But go ahead. You can answer.</p> <p>9 A. Management I think fairly relied upon</p> <p>10 employees at Barclays who both understood the</p> <p>11 nature and conduct of the exchange-traded</p> <p>12 derivatives business and who were able to make</p> <p>13 assessments with respect to that business at the</p> <p>14 material time.</p> <p>15 I believe that those assessments would</p> <p>16 have included -- though I have not spoken</p> <p>17 specifically to anybody about this exact</p> <p>18 point -- but my belief is it would have included</p> <p>19 recognition that by definition, exchange-traded</p> <p>20 business in derivatives has to be conducted in</p> <p>21 accordance with exchange-trading rules, and</p> <p>22 included within those rules are requirements</p> <p>23 that assets are always held in connection with</p> <p>24 such business to, among other things, limit</p> <p>25 exposures with respect to that business.</p>
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<p>1 J. HUGHES</p> <p>2 So that people at Barclays able to</p> <p>3 recognize those important issues were able to</p> <p>4 form the view that to agree to acquire all of</p> <p>5 the exchange-traded business was a reasonable</p> <p>6 judgment to make at the time.</p> <p>7 Q. The business that was being acquired</p> <p>8 was exclusively exchange traded; is that right?</p> <p>9 A. No. The only specific reference to</p> <p>10 exchange traded was to exchange-traded</p> <p>11 derivatives. As I said earlier, the business</p> <p>12 that was being acquired was the whole of the</p> <p>13 businesses in North America of Lehman Brothers.</p> <p>14 So the exchange-traded derivatives business was</p> <p>15 the -- was just one identified aspect of that</p> <p>16 business.</p> <p>17 Q. And were there off-exchange</p> <p>18 derivatives that were also acquired by Barclays?</p> <p>19 A. I wouldn't use the term "off</p> <p>20 exchange." I would use the term "OTC</p> <p>21 derivatives." OTC derivatives were excluded</p> <p>22 from the transaction.</p> <p>23 Q. So the assets that Barclays was</p> <p>24 acquiring was exclusively exchange-traded</p> <p>25 derivatives; is that right?</p>	<p>1 J. HUGHES</p> <p>2 A. No.</p> <p>3 MR. STERN: Objection to the form.</p> <p>4 Q. When you say no, within the</p> <p>5 exchange-traded derivatives -- was Barclays</p> <p>6 acquiring any derivatives other than</p> <p>7 exchange-traded derivatives?</p> <p>8 A. It depends how you define a</p> <p>9 derivative. If by that you mean Barclays agreed</p> <p>10 to acquire the exchange-traded derivatives</p> <p>11 business but by contrast did not agree to</p> <p>12 acquire the OTC derivatives business, then I</p> <p>13 would agree with you.</p> <p>14 Q. Do I understand from your previous</p> <p>15 answer that the business people -- at least it</p> <p>16 is your belief that the business people</p> <p>17 understood that the exchanges require customers</p> <p>18 to keep assets that offset any liabilities on</p> <p>19 the exchange?</p> <p>20 A. Could you repeat the question.</p> <p>21 Q. Let me strike that.</p> <p>22 Have you spoken to any of the business</p> <p>23 people who made the assessment as to whether it</p> <p>24 was reasonable for Barclays to acquire the</p> <p>25 exchange-traded derivatives business?</p>

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MR. STERN: You mean in preparation for the deposition or generally?

Q. In preparation.

A. I have not spoken to anybody in preparation for today about the question you pose with respect to the judgment made.

Q. Other than in preparation for today, have you spoken to the people who made the assessment that Barclays should acquire the exchange-traded derivatives business?

A. I've spoken to at least two people who were knowledgeable at the time about that portion of the transaction.

Q. Who is that?

A. It would include Stephen King and Rich Ricci. It's possible that I have spoken to others over time, but I couldn't recall right now specifically whether there were more or not.

Q. What have you spoken to Stephen King about specifically with respect to how he became comfortable that it was appropriate for Barclays to acquire the exchange-traded derivatives business?

MR. STERN: Excuse me, I'm concerned

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have with a representative of Barclays who is knowledgeable about the futures and options business -- by using "options" in that sense, I mean exchange-traded options -- that it would be implicit in such a discussion that the representative of Barclays would understand that any exchange-traded derivatives position would have associated with it assets at least in part held to limit exposures with respect to those positions.

So I can't recall any specific discussion on the topic, but going back to your earlier question, which I understood to be related to assessments of exposures, I believe that Barclays was in a position at least to estimate that there were assets held in connection with those exposures, albeit that it was not at that point in time to establish precisely either the actual exposures or the value of the assets held in connection with them.

Q. And without knowing the specific amount of the assets or the -- or being able to quantify what the liabilities were, how do you

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that this might call for a privileged communication. I mean it is one thing if you ask the witness as a 30(b)(6) witness what facts he has learned concerning the subject. But it is a different matter when you're asking him about conversations.

So I would rather stick with the facts that Mr. Hughes learned.

MR. MAGUIRE: Well, I'm only looking for facts. I certainly don't want any legal advice.

Q. All I am looking for is how Mr. King made the assessment that whatever the liabilities were in the exchange-traded derivatives, it was nonetheless -- even without quantifying them, it was nonetheless reasonable for Barclays to acquire that business.

MR. STERN: If you know those facts, you can testify to those facts, without describing your conversation.

A. I don't think I can say that from my specific discussions with Mr. King that we addressed those facts as you describe them. I would expect that in any discussion that I might

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understand Barclays' decision makers were able to make the decision that it was reasonable to acquire the exchange-traded derivatives business?

MR. STERN: Objection, asked and answered.

A. Again, I don't -- I don't think I have -- let me start again.

I haven't had a discussion with anybody of that particular type. It's my belief that knowledge of the conduct of that business allows a reasonable person to conclude, with respect to exchange-traded derivatives business, that exposures by definition are limited. They are not at any point in time absolutely quantified.

Indeed, outside of the context of this transaction, I think it would be hard for somebody ever to tell you that with respect to a futures or options exchange-traded position, that there was an absolute quantification of the exposure. That may be feasible with respect to some futures and options positions, but I don't think it's fair to say it's feasible with

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<p>1 J. HUGHES</p> <p>2 respect to all.</p> <p>3 By definition, there is risk in an</p> <p>4 open exchange-traded futures or -- not</p> <p>5 exchange-traded futures, but exchange-traded</p> <p>6 options or futures position.</p> <p>7 Q. When you say the risk is limited by</p> <p>8 the conduct of the business, are you including</p> <p>9 in that the rules of the exchanges?</p> <p>10 A. The rules of the exchanges and the</p> <p>11 clearing houses that are associated with them,</p> <p>12 and primarily what I am referring to there is</p> <p>13 any form of collateral which is held in</p> <p>14 connection with those exchange-traded positions.</p> <p>15 Q. The need for collateral and the fact</p> <p>16 that if you don't have collateral, the exchange</p> <p>17 will liquidate the position?</p> <p>18 A. Correct, in part. I guess it is more</p> <p>19 accurate to say the exchange and/or the clearing</p> <p>20 house has the right to do that. Whether it</p> <p>21 chooses to do so or not is a matter for that</p> <p>22 clearing house or exchange.</p> <p>23 Q. We talked about Mr. King. Have you</p> <p>24 had a discussion with Mr. Ricci specifically</p> <p>25 about how it was reasonable to acquire this</p>	<p>1 J. HUGHES</p> <p>2 business?</p> <p>3 A. I have discussed with Mr. Ricci</p> <p>4 whether or not it was clear to Barclays that</p> <p>5 Barclays had intended to and had acquired those</p> <p>6 businesses.</p> <p>7 MR. STERN: I want to caution</p> <p>8 Mr. Hughes not to disclose any privileged</p> <p>9 communications with Mr. Ricci, and I'm sorry</p> <p>10 for interrupting.</p> <p>11 A. I think I was saying that I have -- I</p> <p>12 have discussed with Mr. Ricci Barclays'</p> <p>13 intention to and agreement to acquire those</p> <p>14 businesses or that part of the business. I do</p> <p>15 not recall speaking specifically with Mr. Ricci</p> <p>16 about judgments of the type we have been</p> <p>17 discussing in the last few minutes.</p> <p>18 Q. OK. Did the Barclays negotiators have</p> <p>19 authority from the board to close this</p> <p>20 transaction if it did not produce an immediate</p> <p>21 gain to Barclays?</p> <p>22 A. The short answer to that is I don't</p> <p>23 know. I do believe that there was authority to</p> <p>24 conclude the transaction that was concluded,</p> <p>25 first of all. I do believe there was authority</p>
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<p>1 J. HUGHES</p> <p>2 to conclude a transaction that yielded an</p> <p>3 accounting gain. I believe there was authority</p> <p>4 to conclude a transaction that was, from a</p> <p>5 capital perspective, positive for Barclays.</p> <p>6 I'm not aware of any discussion that</p> <p>7 referred to an immediate gain. It's possible</p> <p>8 that there was a discussion with respect to the</p> <p>9 immediacy of a gain, but I think most</p> <p>10 importantly the intention of Barclays and the</p> <p>11 hope was that we would be able to conclude a</p> <p>12 transaction that was positive in accounting and</p> <p>13 capital terms and would have yielded an</p> <p>14 accounting gain.</p> <p>15 Q. Is it your understanding that based on</p> <p>16 all of the work that the Barclays due diligence</p> <p>17 teams did, that Mr. Diamond was properly in a</p> <p>18 position to be highly confident in telling the</p> <p>19 board that this transaction was capital</p> <p>20 accretive?</p> <p>21 A. I believe that was Mr. Diamond's view,</p> <p>22 and I believe that it was supported by</p> <p>23 sufficient information, albeit that that</p> <p>24 information was qualified with respect to</p> <p>25 certainty around values.</p>	<p>1 J. HUGHES</p> <p>2 But I think he was in a position to be</p> <p>3 highly confident that it would be positive from</p> <p>4 the bank's perspective.</p> <p>5 Q. So none of the various uncertainties</p> <p>6 that existed precluded Mr. Diamond from</p> <p>7 accurately representing to the board that he was</p> <p>8 highly confident this was capital accretive?</p> <p>9 A. I think that's correct.</p> <p>10 Q. When did Barclays first raise with the</p> <p>11 SIPA trustee its demand for all of the assets in</p> <p>12 the DTC clearance box?</p> <p>13 A. Did you say the SIPA trustee?</p> <p>14 Q. Yes.</p> <p>15 A. Sorry, I thought you said SIVA.</p> <p>16 Q. Maybe I did, but I meant to say SIPA</p> <p>17 trustee.</p> <p>18 A. I apologize. Could you repeat the</p> <p>19 question.</p> <p>20 MR. STERN: I take it this is</p> <p>21 topic 10, communications between Barclays</p> <p>22 and the trustee that occurred between</p> <p>23 September 22 and December 23?</p> <p>24 MR. MAGUIRE: Yes.</p> <p>25 Q. I'm shifting gears, just so you know</p>

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<p>1 J. HUGHES</p> <p>2 where we are.</p> <p>3 A. I appreciate your shifting gears.</p> <p>4 Q. And what I am now asking is</p> <p>5 communications -- you have had a number of</p> <p>6 communications with the trustee over the last</p> <p>7 long time, and they have involved from time to</p> <p>8 time Barclays' demand for the securities or</p> <p>9 assets that are in the DTC clearance box, right?</p> <p>10 A. That's correct.</p> <p>11 Q. And my question is, when did you first</p> <p>12 raise that issue with the trustee?</p> <p>13 A. The subject of assets in the clearance</p> <p>14 boxes of Lehman Brothers was first raised</p> <p>15 between Lehman Brothers and Barclays on Friday,</p> <p>16 the 19th. At some point from the morning of</p> <p>17 Friday, the 19th -- let me say it again.</p> <p>18 At various points, starting, I would</p> <p>19 think not before the morning of the 19th but</p> <p>20 during the period of the 19th to the 22nd --</p> <p>21 when I say the 22nd, I mean by closing on the</p> <p>22 22nd -- there were discussions relating to the</p> <p>23 assets in the clearance boxes that both Barclays</p> <p>24 representatives, be they internal or external,</p> <p>25 and I believe the trustee and/or the trustee's</p>	<p>1 J. HUGHES</p> <p>2 representatives participated in.</p> <p>3 So if by your question you mean when</p> <p>4 were the assets in the clearance boxes first</p> <p>5 discussed among the trustee and its</p> <p>6 representatives and Barclays, I would say at</p> <p>7 some point during that period.</p> <p>8 If your question refers to Barclays'</p> <p>9 desire that the trustee transfer those assets,</p> <p>10 then that first communication requesting a</p> <p>11 transfer I think necessarily happened at some</p> <p>12 point after, but close in time to the closing on</p> <p>13 the morning of the 22nd.</p> <p>14 Q. And after the 22nd, when was the next</p> <p>15 time that Barclays demanded all of the assets</p> <p>16 from the DTC clearance box from the trustee?</p> <p>17 A. I don't recall the first specific</p> <p>18 time. I do both recall and think there were</p> <p>19 several occasions upon which Barclays made that</p> <p>20 request and/or demand, and it was repeated on</p> <p>21 many occasions both directly and indirectly</p> <p>22 either to the trustee or to the trustee's</p> <p>23 representatives.</p> <p>24 Q. Do you recall participating in any of</p> <p>25 those?</p>
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<p>1 J. HUGHES</p> <p>2 A. Yes.</p> <p>3 Q. And what's the first one that you</p> <p>4 recall participating in?</p> <p>5 A. I don't recall exactly when -- I don't</p> <p>6 recall -- I don't have a personal recollection</p> <p>7 of exactly when.</p> <p>8 Q. You couldn't pin it down to the month?</p> <p>9 A. Again, without being able to pinpoint</p> <p>10 the moment, the place or the time, I think</p> <p>11 either I or people working with me made plain,</p> <p>12 certainly during September, and my belief is</p> <p>13 that consistently and persistently since the</p> <p>14 closing, we have made it plain that we demand</p> <p>15 from the trustee all of the assets you</p> <p>16 described.</p> <p>17 I also believe that from my personal</p> <p>18 interactions with the trustee and the trustee's</p> <p>19 representatives, that it was clear both during</p> <p>20 the period of 19th to 22nd of September and at</p> <p>21 all times since then, firstly, that Barclays</p> <p>22 believes that the trustee agreed to transfer all</p> <p>23 of those assets, and that it has always been</p> <p>24 abundantly clear to the trustee that Barclays</p> <p>25 has an outstanding demand for those assets, and</p>	<p>1 J. HUGHES</p> <p>2 at no point in my many discussions that I have</p> <p>3 had with the trustee's representatives has</p> <p>4 anything different emerged with respect to that</p> <p>5 understanding.</p> <p>6 Q. Let me shift gears and direct your</p> <p>7 attention to the clarification letter for the</p> <p>8 next series of questions.</p> <p>9 A. OK.</p> <p>10 Q. I believe you mentioned earlier that</p> <p>11 Mr. LaRocca left the sale hearing early?</p> <p>12 MR. STERN: I said that.</p> <p>13 MR. MAGUIRE: Is that right?</p> <p>14 MR. STERN: Yes.</p> <p>15 Q. Do you have an understanding as to why</p> <p>16 he left early?</p> <p>17 A. No.</p> <p>18 MR. STERN: I think what I said was</p> <p>19 that he was there originally and he left</p> <p>20 early because he thought there was a</p> <p>21 possibility that he would have to make</p> <p>22 arrangements for a closing.</p> <p>23 MR. MAGUIRE: OK.</p> <p>24 Q. Was it Barclays' understanding that</p> <p>25 the closing would follow right after the sale</p>

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<p>1 J. HUGHES</p> <p>2 hearing?</p> <p>3 A. I think it was Barclays' understanding</p> <p>4 that we would seek to close as soon after the</p> <p>5 sale hearing as we could.</p> <p>6 Q. And did you understand that a</p> <p>7 clarifying letter was being prepared?</p> <p>8 A. Yes, I believe a clarification letter</p> <p>9 as it has subsequently become known was expected</p> <p>10 to be completed. Indeed, I believe the drafting</p> <p>11 of it had commenced prior to the sale hearing.</p> <p>12 And ultimately it was concluded at or just</p> <p>13 before the closing on the morning of the 22nd.</p> <p>14 Q. Did Barclays understand that the</p> <p>15 clarifying or clarification letter was intended</p> <p>16 to change the economics of the transaction that</p> <p>17 had been disclosed to the court?</p> <p>18 A. No. I believe it was intended to</p> <p>19 clarify some of the aspects of the transaction</p> <p>20 for the benefit of the court, but also for the</p> <p>21 benefit of all of the parties interested in the</p> <p>22 transaction.</p> <p>23 Q. And is it Barclays' understanding that</p> <p>24 the clarification letter does in any way change</p> <p>25 the economics of the transaction from what was</p>	<p>1 J. HUGHES</p> <p>2 disclosed to the court?</p> <p>3 A. I think in large part the economics</p> <p>4 are not meaningfully different, because, as I</p> <p>5 have said a few times, the economics of the</p> <p>6 transaction were most appropriately assessed in</p> <p>7 the context of the asset purchase agreement as a</p> <p>8 whole, by which I mean the sale of the business</p> <p>9 of Lehman Brothers as a whole.</p> <p>10 To the extent there was any ultimate</p> <p>11 economic difference, it's possible that after</p> <p>12 the conclusion of the clarification letter and</p> <p>13 the negotiations that surrounded it, that there</p> <p>14 may have been a diminution in some of the assets</p> <p>15 that Barclays received, but -- so for example,</p> <p>16 there had been some discussions with respect to</p> <p>17 some residential mortgages, just as an example,</p> <p>18 and those discussions had taken place earlier in</p> <p>19 the week. By the time the clarification letter</p> <p>20 was concluded, those residential mortgages were</p> <p>21 I believe unavailable, but in any event were not</p> <p>22 part of the different categories of assets that</p> <p>23 Barclays ultimately received or agreed would be</p> <p>24 received.</p> <p>25 Q. Did anyone at Barclays ever perform a</p>
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<p>1 J. HUGHES</p> <p>2 valuation of what you refer to as the RESIs?</p> <p>3 A. I believe that during -- while the</p> <p>4 RESIs were being discussed as a possible portion</p> <p>5 of the transfer of assets, there were some</p> <p>6 attempts to value them. I'm not aware of any</p> <p>7 particular -- sorry, let me start again.</p> <p>8 I'm not aware of any conclusion to any</p> <p>9 analysis that Barclays was able to conduct. I</p> <p>10 believe that I can't now recall the full value,</p> <p>11 but there were estimations of the values</p> <p>12 presented by Lehman Brothers.</p> <p>13 Q. And do you know whether Barclays ever</p> <p>14 attributed any value to any of those RESIs?</p> <p>15 A. I don't know whether we specifically</p> <p>16 attributed value. I think there were -- that</p> <p>17 the RESIs were included with the received values</p> <p>18 applied to them by Lehman Brothers in certain</p> <p>19 more detailed analyses around different</p> <p>20 categories of assets and liabilities. They were</p> <p>21 probably included in particular renditions of</p> <p>22 what some of those different categories of</p> <p>23 assets and valuations may have looked like.</p> <p>24 So I think that Barclays used some of</p> <p>25 those received values and presented them</p>	<p>1 J. HUGHES</p> <p>2 together with other received values, among other</p> <p>3 things, while trying to calculate what different</p> <p>4 categories of assets and liabilities may</p> <p>5 ultimately have been worth.</p> <p>6 But I don't recall Barclays ever</p> <p>7 coming to its own view about actually what those</p> <p>8 RESIs were worth, if that's what you're really</p> <p>9 after.</p> <p>10 Q. That's what I really wanted to</p> <p>11 understand, whether Barclays itself attributed</p> <p>12 any value to the RESIs.</p> <p>13 A. I don't think we reached a conclusion,</p> <p>14 because in common with all of the numbers that</p> <p>15 Lehman gave us, we were very conscious that they</p> <p>16 were both presented as estimations and were</p> <p>17 inherently uncertain. That's not true just of</p> <p>18 the RESIs, but it was particularly true of the</p> <p>19 RESIs, I think, because the valuation of</p> <p>20 residential mortgages, leaving aside all other</p> <p>21 asset classes, at that particular time was a</p> <p>22 very difficult thing.</p> <p>23 MR. STERN: Let me just consult with</p> <p>24 the witness for a moment.</p> <p>25 (Pause)</p>

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<p>1 J. HUGHES</p> <p>2 Q. Do you want to clarify your answer?</p> <p>3 A. Yes, in the following way, just to</p> <p>4 establish that my answers to your questions are</p> <p>5 given in the belief that you're referring to a</p> <p>6 particular category of RESIs as you described</p> <p>7 them which had formed an identified asset within</p> <p>8 the negotiation, as distinct from residential</p> <p>9 mortgages as a whole.</p> <p>10 Q. We are just talking about a specific</p> <p>11 category that was identified in the APA,</p> <p>12 residential mortgage-backed securities.</p> <p>13 A. Yes. Identified in the APA prior to</p> <p>14 Friday, the 19th?</p> <p>15 Q. Yeah.</p> <p>16 A. Yes.</p> <p>17 Q. And it is your understanding that none</p> <p>18 of those were included in any of the assets that</p> <p>19 were acquired by Barclays?</p> <p>20 A. That's not my understanding. I don't</p> <p>21 know with certainty whether there were any of</p> <p>22 the components of the class we have thus far</p> <p>23 been describing as the RESIs that ultimately</p> <p>24 were delivered to Barclays.</p> <p>25 I do believe that Barclays received</p>	<p>1 J. HUGHES</p> <p>2 some assets that you would describe as</p> <p>3 residential mortgage assets in transfers of</p> <p>4 assets from Lehman Brothers, be that assets</p> <p>5 received in the repo transaction, or it's</p> <p>6 possible the clearance boxes included them,</p> <p>7 though I think that's less likely. I don't</p> <p>8 particularly recall. But --</p> <p>9 Q. And what about the fed settlement</p> <p>10 transfers from JPMorgan Chase? Do you know</p> <p>11 whether the RESIs were included in that</p> <p>12 transfer?</p> <p>13 A. The RESIs, as you previously described</p> <p>14 them, I think were not intended to be included</p> <p>15 in that JP Morgan settlement. Again, I couldn't</p> <p>16 tell you whether -- what ultimately the makeup</p> <p>17 was of each of those different categories of</p> <p>18 assets, the repo, the JP Morgan settlement, the</p> <p>19 clearance boxes.</p> <p>20 I believe that others are able to</p> <p>21 describe accurately, if they haven't already,</p> <p>22 what those -- what the makeup of each of those</p> <p>23 different pools was. Or is.</p> <p>24 Q. With respect to the securities that</p> <p>25 were delivered as part of the fed settlement in</p>
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<p>1 J. HUGHES</p> <p>2 December of 2008, you know what I am referring</p> <p>3 to?</p> <p>4 A. I assume -- I think I do, but I</p> <p>5 typically refer to it as the JP Morgan</p> <p>6 settlement.</p> <p>7 Q. That makes more sense, the JP Morgan</p> <p>8 settlement. Who would be the person who would</p> <p>9 know whether any of the RESIs were included in</p> <p>10 that?</p> <p>11 A. I would think Stephen King would know</p> <p>12 the answer to that. I would think that it's</p> <p>13 possible that -- it's possible that Jim Hraska,</p> <p>14 Alastair Blackwell and other people working in</p> <p>15 the operations function at Barclays would be</p> <p>16 able to establish that.</p> <p>17 Q. You described earlier how you believe</p> <p>18 that --</p> <p>19 A. Sorry to interrupt you. Can I -- I'm</p> <p>20 not sure whether I made it clear earlier, but</p> <p>21 the RESIs as a defined term were not intended to</p> <p>22 be included, and so I believe it's fair to say</p> <p>23 that they were not.</p> <p>24 There may, as I say, have been</p> <p>25 residential mortgages that were ultimately</p>	<p>1 J. HUGHES</p> <p>2 delivered in one or more parts of the total</p> <p>3 transfer.</p> <p>4 Q. Did you understand that the court at</p> <p>5 the sale hearing had expressed a view that it</p> <p>6 would regard any changes in the transaction</p> <p>7 of -- certainly in the amount of 500 million</p> <p>8 dollars or more as being material?</p> <p>9 MR. STERN: Objection to the form.</p> <p>10 A. From my review of the transcript of</p> <p>11 the sale hearing -- and I must just note that</p> <p>12 for the -- for this particular purpose, I have</p> <p>13 not read that portion of the transcript, but my</p> <p>14 recollection of the transcript is that the judge</p> <p>15 was made aware that there were -- that the</p> <p>16 clarification letter was being finalized, that</p> <p>17 discussions were continuing with respect to some</p> <p>18 of the detailed terms, but the clarification</p> <p>19 letter was hoped to be concluded promptly, and</p> <p>20 that the judge wanted to insure that there were</p> <p>21 no material changes to the transaction or that</p> <p>22 if there had been or if there were to be</p> <p>23 material changes in the transaction, that there</p> <p>24 were -- there would be an opportunity for those</p> <p>25 interested to return to court to discuss any</p>

<p style="text-align: right;">Page 82</p> <p>1 J. HUGHES</p> <p>2 such material changes with him.</p> <p>3 Q. And Barclays understood that?</p> <p>4 A. Yes, I believe we did understand that.</p> <p>5 I believe we also had reached, prior to the sale</p> <p>6 hearing, an agreement with Lehman Brothers with</p> <p>7 respect to all of the terms of the transaction.</p> <p>8 I believe the clarification letter did clarify</p> <p>9 some aspects of that discussion and agreement,</p> <p>10 but that there were, in fact, no material</p> <p>11 changes to the transaction from the 19th through</p> <p>12 to the 22nd of September.</p> <p>13 Q. Was it Barclays' view then that the</p> <p>14 clarification letter did not cause any material</p> <p>15 change to the transaction from what had been</p> <p>16 described to the court?</p> <p>17 A. Correct.</p> <p>18 Q. And there was no need then to return</p> <p>19 to the court to advise the court of the</p> <p>20 provisions or the economic deal as reflected in</p> <p>21 the clarification letter?</p> <p>22 A. I believe that Barclays did conclude</p> <p>23 there was no need to return to the court to</p> <p>24 describe anything to the court. I believe that</p> <p>25 that was also the understanding of Lehman</p>	<p style="text-align: right;">Page 83</p> <p>1 J. HUGHES</p> <p>2 Brothers and its representatives at the time. I</p> <p>3 believe that representatives of Lehman Brothers</p> <p>4 considered whether that was necessary on the --</p> <p>5 prior to closing and concluded that it was not</p> <p>6 necessary. And all of that was, is consistent</p> <p>7 with Barclays' understanding.</p> <p>8 The court had already heard, as I said</p> <p>9 at the outset, that this was a transaction that</p> <p>10 was intended to deliver the whole of the</p> <p>11 business of Lehman Brothers in North America and</p> <p>12 not specific pieces of that business. The court</p> <p>13 understood that any valuations that had been</p> <p>14 given or described were no more than estimates</p> <p>15 of value.</p> <p>16 I believe the court understood and all</p> <p>17 the interested parties understood that the --</p> <p>18 that those valuations were uncertain and that</p> <p>19 therefore, there would be no representations or</p> <p>20 warranties about any aspect, any valuation</p> <p>21 aspects of the deal.</p> <p>22 I believe that Barclays and Lehman</p> <p>23 Brothers and its respective representatives</p> <p>24 understood that all the interested parties, be</p> <p>25 they the estate, the trustee, the creditors</p>
<p style="text-align: right;">Page 84</p> <p>1 J. HUGHES</p> <p>2 committee, had all participated in all the</p> <p>3 relevant discussions associated with the</p> <p>4 transaction, and most particularly with respect</p> <p>5 to all aspects of the clarification letter, and</p> <p>6 that everybody who had an interest had an</p> <p>7 opportunity to review those terms, to review --</p> <p>8 to participate in discussions and to reach</p> <p>9 agreements about them.</p> <p>10 I also believe that the fact that for</p> <p>11 a considerable period of time, nobody who was</p> <p>12 either a participant or interested in the</p> <p>13 proceedings did, in fact, go back to the court</p> <p>14 to ask the court to review that clarification</p> <p>15 letter suggests to me that that was everybody's</p> <p>16 belief at the time.</p> <p>17 Q. Did Barclays consider going back to</p> <p>18 the court to present the clarification letter?</p> <p>19 A. No, we did not, and Weil Gotshal I</p> <p>20 believe did file the clarification letter with</p> <p>21 the court on the 22nd, I believe.</p> <p>22 Q. Did Barclays consider going back to</p> <p>23 the court to disclose the amount of the clearing</p> <p>24 fund and margin that it was acquiring in the</p> <p>25 transaction?</p>	<p style="text-align: right;">Page 85</p> <p>1 J. HUGHES</p> <p>2 A. Barclays --</p> <p>3 MR. STERN: I am going to object to</p> <p>4 the form. Just to be clear, when you talk</p> <p>5 about consider, you're not calling for</p> <p>6 attorney/client communications.</p> <p>7 Q. Just the business.</p> <p>8 A. Can you describe what you mean by the</p> <p>9 clearing fund?</p> <p>10 Q. Just whatever Barclays is claiming by</p> <p>11 way of collateral held to secure exchange-traded</p> <p>12 derivatives, I'm including that and margin</p> <p>13 together.</p> <p>14 A. Well, I wouldn't use the term</p> <p>15 "clearing fund" for that purpose.</p> <p>16 I think your question is, did we</p> <p>17 consider going back to the court with respect to</p> <p>18 those sorts of property, and the answer is no.</p> <p>19 Q. And why wouldn't you include clearing</p> <p>20 fund in that?</p> <p>21 A. I just -- I just wouldn't use the term</p> <p>22 "clearing fund" because it is -- it is not clear</p> <p>23 to me exactly what you mean by it, but also, it</p> <p>24 would, it would likely be just one portion of a</p> <p>25 greater whole, namely, any property of any</p>

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description that was relevant to the exchange-traded futures and options business.

But there was no need to go back to the court for -- on any portion of that, because the agreement was already clear to the court.

Q. Can you tell me in -- how it was clear to the court that Barclays would be acquiring margin?

A. It was clear to the court because margin is necessarily part of the exchange-traded business of Lehman Brothers.

Q. And was there any disclosure to the court of the amount of the margin that Barclays was acquiring?

A. I don't believe there was a figure given with respect to it.

Q. What about with respect to the 15c3 asset? Are you aware of any disclosure to the court that Barclays was acquiring the 15c3 asset?

A. I believe the court was told that there was to be -- I can't be certain about this, but I believe the court was told that there was to be transfer of a 15c3 asset, as you

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paragraph N in the sale order which makes particular reference to margin, and I think again, from that, I did -- I think it is clear that the court understood that the margin and collateral held with respect to the exchange-traded derivatives business was also -- was included within the transaction and included within the assets to be transferred to Barclays.

I might just add furthermore that I think it would have been very surprising to Barclays, indeed to most onlookers, that -- if margin or collateral held with respect to that exchange-traded business was not included. Indeed, I think it would be shocking if it had not been included.

MR. STERN: Let me ask you a question in terms of timing. Are you planning to break for lunch around 1 o'clock or earlier?

If we are going to break around 1:00, I would like to take a five-minute break now. If we are going to stop around 12:30, then we might as well keep going.

MR. MAGUIRE: Why don't we take a break and I'll check on lunch.

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describe. I can't remember whether there was any quantification of that.

Q. And when you say the court --

A. Specifically.

Q. -- the court was told, you are saying in the on-the-record session on the 19th?

A. I believe so. But I could be wrong about that.

Q. Can you tell me how it was clear to the court that Barclays was obtaining as part of this sale the assets in the clearance boxes?

A. The assets in the clearance boxes were unencumbered assets of the business of Lehman Brothers and were purchased assets as defined -- purchased assets had been defined in the asset purchase agreement which was disclosed to the court, and so I think from all of that, if nothing else, it was clear to the court.

Might I just refer back to one of your earlier questions, because as I think further on the topic of margin, I believe that in the sale order, there is reference to margin, and I think -- I don't always remember paragraph numbers or letters clearly, but I think there is

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MR. STERN: OK, just five minutes.

MR. MAGUIRE: Yeah.

(Recess)

BY MR. MAGUIRE:

Q. The witness wishes to add something to a previous answer?

A. Yeah. Just, you asked me more than one question about what was clear to the court and why. I think it is just worth noting that all of the relevant commentary or description to the court was presented by Harvey Miller and other representatives of Lehman at Weil Gotshal. Indeed, I think there was an actual agreement that Barclays would not be allowed to make any representations to the court without some prior agreement. He may even not have included that proviso.

But fundamentally all the representations to the court and all of the determinations or judgments made about what was appropriate to be described to the court were made I think essentially by Harvey Miller and Weil Gotshal on behalf of Lehman Brothers.

I don't know whether that's helpful,

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<p>1 J. HUGHES</p> <p>2 but I think it was as a factual matter the way</p> <p>3 it was done, and therefore what was made clear</p> <p>4 to the court, to use your terms, was made clear</p> <p>5 largely by Harvey Miller, sometimes by Lori</p> <p>6 Fife. By agreement, Barclays didn't really have</p> <p>7 the opportunity to make those determinations or</p> <p>8 judgments.</p> <p>9 ,Now, I believe that in fact Harvey</p> <p>10 Miller and others gave a very fair and accurate</p> <p>11 rendition of the transaction. And indeed they</p> <p>12 didn't change beyond -- after those descriptions</p> <p>13 had been given.</p> <p>14 In any event, I thought that would be</p> <p>15 useful to add.</p> <p>16 Q. What's the agreement that you referred</p> <p>17 to?</p> <p>18 A. I can't remember exactly where it</p> <p>19 appears, but I believe there was a provision in</p> <p>20 one of the transaction documents in which it was</p> <p>21 agreed that the transaction would be described</p> <p>22 to the court only by Weil Gotshal. I can't</p> <p>23 remember its precise terms, but that was the --</p> <p>24 that was the effect of it.</p> <p>25 Q. Did Barclays believe that it was</p>	<p>1 J. HUGHES</p> <p>2 constrained and unable to say anything to the</p> <p>3 court that it felt appropriate concerning the</p> <p>4 transaction?</p> <p>5 A. I don't know whether people at court</p> <p>6 at the time felt that, but I think that that</p> <p>7 provision did exist. I don't think that</p> <p>8 Barclays felt that it hurt anything or that it</p> <p>9 was either unfair or inaccurate. And nor do I</p> <p>10 think that anybody who was present felt there</p> <p>11 was any need on Barclays' part to say anything.</p> <p>12 So I don't raise the point to suggest</p> <p>13 that there might have been such a need on</p> <p>14 Barclays' part, but just to make plain that to</p> <p>15 the extent there were comments made at court by</p> <p>16 anybody, they were, they were in large part, if</p> <p>17 not in fact in totality, made by Harvey Miller</p> <p>18 and other representatives at Weil Gotshal.</p> <p>19 Q. You think you could find that</p> <p>20 provision that you're thinking of and tell us</p> <p>21 what it is?</p> <p>22 MR. STERN: I can find it. In the</p> <p>23 APA, I believe it's Section 7.2.</p> <p>24 MR. MAGUIRE: That's appreciated.</p> <p>25 Thanks.</p>
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<p>1 J. HUGHES</p> <p>2 MR. STERN: Which states, "Purchaser</p> <p>3 shall not, without the prior written consent</p> <p>4 of seller, file, join in or otherwise</p> <p>5 support in any manner whatsoever any motion</p> <p>6 or other pleading relating to the sale of</p> <p>7 the purchased assets."</p> <p>8 Q. And did you understand there was any</p> <p>9 need for you to get any such consent?</p> <p>10 A. I think there was a need to get</p> <p>11 consent if we felt the need to say anything or</p> <p>12 make any representation or make any filing with</p> <p>13 respect to the sale up until that point, but I</p> <p>14 don't think anything happened or anything was</p> <p>15 said that led anybody at Barclays who was</p> <p>16 present to think that there was any need for</p> <p>17 anybody at Barclays to say anything.</p> <p>18 Q. Right.</p> <p>19 Now, did you understand that the</p> <p>20 purpose of the sale hearing was for the court to</p> <p>21 determine whether or not to approve the sale?</p> <p>22 A. Yes.</p> <p>23 Q. And did Barclays understand that it</p> <p>24 was important for the court to understand the</p> <p>25 economics of the transaction in making that</p>	<p>1 J. HUGHES</p> <p>2 determination?</p> <p>3 MR. STERN: Objection to the form.</p> <p>4 Vague.</p> <p>5 You can answer.</p> <p>6 A. I think the court had to take a gander</p> <p>7 at a whole variety of issues with respect to the</p> <p>8 transaction in order to determine whether to</p> <p>9 approve it or not. I think it is clear from the</p> <p>10 transcript that there were, there were many</p> <p>11 issues to be taken account of, most notable</p> <p>12 among which I believe were the extreme</p> <p>13 circumstances of that period in financial</p> <p>14 markets, and the pressing need in time -- not</p> <p>15 least in terms of timing, to preserve as much</p> <p>16 value as possible in the estate, in the</p> <p>17 business, for the benefit of the estate, the</p> <p>18 creditors, and a whole variety of additional</p> <p>19 people associated with Lehman Brothers, and</p> <p>20 indeed for the benefit of the economy as a</p> <p>21 whole.</p> <p>22 And I think that those driving forces</p> <p>23 behind the transaction and the need to act</p> <p>24 quickly to preserve that value in the business</p> <p>25 and in the estate for all of those parties comes</p>

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<p>1 J. HUGHES</p> <p>2 across quite firmly as, not the only factors,</p> <p>3 but certainly among the most important.</p> <p>4 So economics is part of that</p> <p>5 certainly, but it is not of itself the single</p> <p>6 issue.</p> <p>7 Q. So one thing but by no means the only</p> <p>8 thing that the court needed to have an</p> <p>9 understanding of was the economics of the</p> <p>10 transaction; is that correct?</p> <p>11 MR. STERN: Objection to the form.</p> <p>12 A. I think the court had to understand</p> <p>13 the transaction, yes.</p> <p>14 Q. And did Barclays believe that the</p> <p>15 court had an understanding of the economics of</p> <p>16 the transaction?</p> <p>17 MR. STERN: Objection to the form.</p> <p>18 A. I'm not sure I know exactly what you</p> <p>19 mean by economics. I believe the court</p> <p>20 understood that the transaction was proposed and</p> <p>21 indeed did transfer to Barclays the business of</p> <p>22 Lehman Brothers in North America, and I believe</p> <p>23 it gained a clear understanding of those</p> <p>24 detailed aspects of that transaction that Harvey</p> <p>25 Miller and Weil Gotshal determined were</p>	<p>1 J. HUGHES</p> <p>2 appropriate to display to the court, be it on</p> <p>3 the 17th or the 19th or in a clarification</p> <p>4 letter that was filed on the morning of the</p> <p>5 22nd.</p> <p>6 So I believe that the court had a very</p> <p>7 clear understanding of the transaction.</p> <p>8 Q. Does Barclays believe that the court</p> <p>9 had a clear understanding of the total value of</p> <p>10 the assets that Barclays was acquiring?</p> <p>11 MR. STERN: Objection to the form.</p> <p>12 A. I believe the court understood that</p> <p>13 it -- that the transaction included assets and</p> <p>14 liabilities that people had made a good faith</p> <p>15 effort to value, but whether or not the court</p> <p>16 felt that it had an exact valuation for each and</p> <p>17 every asset or liability, I doubt. But I don't</p> <p>18 think that any part of the transaction or an</p> <p>19 understanding of it required that degree of</p> <p>20 exactitude or certainty.</p> <p>21 Q. I'm not asking you about specific</p> <p>22 parts. I'm asking you whether Barclays believed</p> <p>23 that the court understood the total value of the</p> <p>24 assets that Barclays was acquiring.</p> <p>25 MR. STERN: Objection to the form.</p>
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<p>1 J. HUGHES</p> <p>2 You have already asked that question. Are</p> <p>3 you asking again?</p> <p>4 MR. MAGUIRE: No, no. I asked that</p> <p>5 question, you're right. The witness</p> <p>6 answered with respect to the specific</p> <p>7 components of the total value. That's not</p> <p>8 what I want.</p> <p>9 Q. What I want is whether Barclays</p> <p>10 understood that the court had an understanding</p> <p>11 of the total value of all of the assets that</p> <p>12 Barclays was acquiring.</p> <p>13 MR. STERN: Objection to the form.</p> <p>14 A. I believe the court understood certain</p> <p>15 estimations of value, most importantly</p> <p>16 understood that those valuations were estimates,</p> <p>17 but that more importantly, to understand the</p> <p>18 transaction, the court understood everything it</p> <p>19 needed to, to be able to approve the</p> <p>20 transaction.</p> <p>21 Q. So I am still waiting for you to</p> <p>22 explain to me whether Barclays believed the</p> <p>23 court was told what the total value was of the</p> <p>24 assets that Barclays was acquiring.</p> <p>25 MR. STERN: Objection to the form.</p>	<p>1 J. HUGHES</p> <p>2 A. I believe the court was given an</p> <p>3 estimation of that total value.</p> <p>4 Q. And what was that estimation?</p> <p>5 A. I don't know what the total number</p> <p>6 was. I don't think a total number was actually</p> <p>7 given.</p> <p>8 Q. So you're saying there were a couple</p> <p>9 of numbers that were given to the court, and if</p> <p>10 you were to add those numbers up, you would get</p> <p>11 the total value of the assets that Barclays is</p> <p>12 acquiring; is that what you are saying?</p> <p>13 MR. STERN: Objection to the form.</p> <p>14 A. No, I am not saying that. I am saying</p> <p>15 in the APA and through the various</p> <p>16 representations of Harvey Miller, Lori Fife and</p> <p>17 so on, that some numbers were given. The court</p> <p>18 understood that those were estimations. The</p> <p>19 court understood from the various</p> <p>20 categorizations of assets what the total assets</p> <p>21 were that were included and described in the</p> <p>22 transaction.</p> <p>23 I'm not aware that a total number was</p> <p>24 ever given for that. And again, I don't think</p> <p>25 the court either expected at the sale hearing or</p>

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<p>1 J. HUGHES</p> <p>2 needed at the sale hearing a total number, an</p> <p>3 exact number for the total amount of assets or</p> <p>4 liabilities, because that wasn't the deal. The</p> <p>5 deal was Lehman agreed to sell and Barclays</p> <p>6 agreed to buy the North American businesses of</p> <p>7 Lehman Brothers.</p> <p>8 The court understood, it was very</p> <p>9 clear in the asset purchase agreement, it was</p> <p>10 not possible at that particular point in time to</p> <p>11 give an absolute amount for the total assets or</p> <p>12 liabilities, and that's why nobody ever</p> <p>13 represented or warranted anything about those</p> <p>14 total values.</p> <p>15 So to come back to your question, I</p> <p>16 don't think the court heard a specific number</p> <p>17 for the total value of assets and liabilities,</p> <p>18 but I believe that that was not necessary. It</p> <p>19 was not contemplated as part of the transaction.</p> <p>20 Had it been a different type of transaction,</p> <p>21 often referred to as a balance sheet</p> <p>22 transaction, it might have been different. But</p> <p>23 that was not the deal.</p> <p>24 Q. At the time that the court approved</p> <p>25 the sale then, did the court know what the total</p>	<p>1 J. HUGHES</p> <p>2 value of the assets was that Barclays was</p> <p>3 acquiring?</p> <p>4 MR. STERN: Objection to the form.</p> <p>5 You can answer.</p> <p>6 A. I'm pausing because I'm trying to</p> <p>7 think of a different way of answering the same</p> <p>8 question.</p> <p>9 I think the court had been given</p> <p>10 estimations of values. I think the court</p> <p>11 understood that they were estimations. I'm not</p> <p>12 aware of a total number that was presented to</p> <p>13 the court as a precise number for those total --</p> <p>14 for those total values.</p> <p>15 I believe it's clear from the</p> <p>16 transcript that the court understood</p> <p>17 sufficiently the value of assets and</p> <p>18 liabilities, and understood that in approving</p> <p>19 the transaction, there was an opportunity to</p> <p>20 preserve those values, and not to do so would</p> <p>21 likely not only destroy those values but destroy</p> <p>22 lots of other value too.</p> <p>23 I'm not sure I can say it in any other</p> <p>24 way.</p> <p>25 Q. Did the court -- let me put it</p>
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<p>1 J. HUGHES</p> <p>2 differently then. Did the court have the</p> <p>3 ability based on what was presented at the sale</p> <p>4 hearing to figure out roughly, not precisely or</p> <p>5 with certainty, but roughly what the total value</p> <p>6 was of the assets that Barclays was acquiring?</p> <p>7 MR. STERN: Objection to the form.</p> <p>8 A. I think the court had the opportunity</p> <p>9 to understand the values of the categories of</p> <p>10 assets that were to be delivered. I'm not aware</p> <p>11 that at any point every single one of those</p> <p>12 categories was given a valuation during the sale</p> <p>13 hearing.</p> <p>14 But I don't think that it was</p> <p>15 necessary for the court to hear specific values</p> <p>16 with respect to each and every category of</p> <p>17 assets in order to make a judgment as to whether</p> <p>18 it made sense or was the right thing to approve</p> <p>19 the transaction.</p> <p>20 Q. In each of your answers, you have</p> <p>21 referred to specific categories, and for my next</p> <p>22 series of questions, I don't want to address</p> <p>23 specific categories. What I want to address is</p> <p>24 the overall economic result and specifically the</p> <p>25 total value of all of the assets that were</p>	<p>1 J. HUGHES</p> <p>2 included in the sale.</p> <p>3 Did Barclays understand that the court</p> <p>4 would be interested in knowing what the total</p> <p>5 value of the assets that Barclays was acquiring</p> <p>6 was?</p> <p>7 MR. STERN: Objection. Before you</p> <p>8 answer that, I'll object to the form, and</p> <p>9 you can try to answer that again.</p> <p>10 Did Barclays understand that the court</p> <p>11 would be interested in knowing. You can</p> <p>12 answer that if you understand it.</p> <p>13 A. I don't know what Judge Peck was</p> <p>14 interested in knowing about the total value of</p> <p>15 assets. I do believe that the court was</p> <p>16 interested in understanding the transaction and</p> <p>17 its salient elements in order to determine</p> <p>18 whether it was the right thing to approve the</p> <p>19 sale.</p> <p>20 I think the court heard fair and</p> <p>21 accurate descriptions of some assets and their</p> <p>22 estimated values, and again, that that was</p> <p>23 sufficient for the court to make a judgment.</p> <p>24 The ability to calculate total values with</p> <p>25 respect to all of the assets was probably not --</p>

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let me say that again. The ability to accurately value the total amounts was dependent on a whole variety of additional factors that were hard to describe at that point in time.

So I think the court made its assessment recognizing that. To take one example, a number of the securities that Barclays received in the transaction were not capable of being accurately valued by Barclays specifically at that point in time. Indeed, I think you have heard from other Barclays witnesses that an enormous amount of effort was required to come to specific valuations with respect to particular assets.

And that was one of the difficulties of the week and one of the risks that Barclays took in agreeing to acquire certain types of assets in the transaction.

Q. Did Barclays believe that the court could approve a sale without knowing what the, at least on an estimated basis, what the total value of the assets were that Barclays was acquiring?

MR. STERN: Let me just think about

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this, because I'm concerned that this question now intrudes on the attorney/client privilege, and the advice that --

A. I think I agree with that actually.

MR. STERN: I don't know if there was any advice on this subject, but if there was, it would be privileged.

I think I'll instruct you not to answer this, and you can formulate a different question.

Q. And I take it you will follow the advice of your counsel?

A. As always.

Q. Did Barclays consider disclosing to the court the values -- let me strike that.

Was the court told of the total liabilities that Barclays was acquiring in the transaction?

MR. STERN: That you can answer. If you remember.

A. I think the answer to that is no. I won't repeat all of the attendant descriptions that I gave you with respect to the assets, but the same commentary applies to liabilities as it

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does to assets.

Q. Can you tell me what were the most significant liabilities that were not disclosed to the court?

MR. STERN: Objection to the form.

A. I don't think any meaningful liability was not disclosed to the court.

Q. And then can you tell me in what respect was there not a full disclosure to the court with respect to the liabilities that Barclays was assuming?

MR. STERN: Objection to form.

A. I didn't say that.

Q. Let me ask you that question. Was there a full disclosure to the court of all of the liabilities that Barclays was assuming?

A. Yes.

Q. Was there a full disclosure to the court of all of the assets that Barclays was acquiring?

A. I believe so, yes.

Q. With respect to the liabilities, was there a full disclosure with respect to the value of those liabilities?

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MR. STERN: Objection to the form.

A. If by full disclosure you mean disclosure of what the court needed to know with respect to those assets and liabilities, my answer is yes.

Q. Did that full disclosure include what the overall estimated value of the assets were?

MR. STERN: Objection to the form.

A. I think as I said a moment ago, and I really was trying not to repeat the lengthy answers I gave you with respect to assets, that the court heard estimations of value with respect to some liabilities. Those estimations were given by representatives of Lehman Brothers, and I think they were a fair and -- a fair description, given with the best intentions and by people who had tried under very difficult circumstances to come up with real, accurate, precise numbers for all of those liabilities and indeed the assets.

But they were estimations, and everybody understood them to be that.

Q. At the time that the liabilities were estimated to the court, did Barclays believe

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<p>1 J. HUGHES</p> <p>2 that those estimates were appropriate?</p> <p>3 MR. STERN: Objection to the form.</p> <p>4 A. There were estimations of liabilities</p> <p>5 that Barclays received from Lehman Brothers both</p> <p>6 during the week. Some of them were described on</p> <p>7 the 17th. Some of them were described on the</p> <p>8 19th.</p> <p>9 Barclays was -- there was no reason</p> <p>10 that I can recall or that anybody has recalled</p> <p>11 to me to believe that there wasn't a good faith</p> <p>12 effort made by the Lehman Brothers</p> <p>13 representatives to come up with those</p> <p>14 valuations. There was certainly disagreements</p> <p>15 with respect to valuations during the course of</p> <p>16 the week, with respect to some of the assets.</p> <p>17 Whether we made a judgment specifically with</p> <p>18 respect to all of them and were able to conclude</p> <p>19 that they were all accurate, I don't think we</p> <p>20 had that ability at that time.</p> <p>21 Some of the information was</p> <p>22 necessarily information of the type not only</p> <p>23 that Barclays could not have had in its</p> <p>24 possession other than by receiving it from</p> <p>25 Lehman Brothers, some of it was information</p>	<p>1 J. HUGHES</p> <p>2 which we had no ability to test.</p> <p>3 Q. Did you have any reason to disagree</p> <p>4 with the numbers that were presented by Weil</p> <p>5 with respect to liabilities?</p> <p>6 A. Represented by Weil when?</p> <p>7 Q. At the sale hearing.</p> <p>8 A. At the sale hearing? There was</p> <p>9 nothing that Weil said at the sale hearing that</p> <p>10 to the people present seemed to be wildly</p> <p>11 inaccurate or in any way misleading to anybody</p> <p>12 with respect to values.</p> <p>13 As I said more than once, they were</p> <p>14 not -- by "they," I mean the people at Barclays</p> <p>15 present, were not privy to the basis upon which</p> <p>16 those numbers were arrived at. But there was</p> <p>17 nothing that any of them heard at the time, and</p> <p>18 there is nothing that, on reviewing the</p> <p>19 transcript, that suggests to me that there was</p> <p>20 either any confusion or any meaningful</p> <p>21 inaccuracies, albeit bearing in mind the proviso</p> <p>22 neither I nor the Barclays representatives sat</p> <p>23 with Harvey Miller or anybody else to figure out</p> <p>24 what the numbers should look like.</p> <p>25 Q. There were certain assets -- you</p>
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<p>1 J. HUGHES</p> <p>2 described earlier how there were certain long</p> <p>3 positions that were identified as 47.4 billion</p> <p>4 dollars. You recall that?</p> <p>5 MR. STERN: Objection to the form.</p> <p>6 A. Again, I don't think I did say that.</p> <p>7 I think you said that.</p> <p>8 Q. OK. What did Barclays understand was</p> <p>9 included within the 47.4 billion dollars that</p> <p>10 Ms. Fife represented to the court?</p> <p>11 MR. STERN: I will object.</p> <p>12 But I will let you answer, but this</p> <p>13 has been asked and answered.</p> <p>14 A. I believe I did answer that question</p> <p>15 earlier. I believe what I said, what I now</p> <p>16 believe is that the number you are referring to</p> <p>17 was a number given by Lori Fife to describe</p> <p>18 changes, as best I can tell from the transcript,</p> <p>19 with respect to numbers that had previously been</p> <p>20 given and previously described as long</p> <p>21 positions.</p> <p>22 I do not know, nor have I been able to</p> <p>23 find anybody that does know, exactly what Lori</p> <p>24 Fife intended to say by that number. I can tell</p> <p>25 very clearly from the transcript that her</p>	<p>1 J. HUGHES</p> <p>2 primary aim was to describe from that part of</p> <p>3 her presentation what -- a change in what she</p> <p>4 viewed as the valuation of some assets that were</p> <p>5 previously agreed to be transferred in the sale.</p> <p>6 As it happens, or as things turned</p> <p>7 out, it was largely a meaningless, in my view,</p> <p>8 description -- "meaningless" is the wrong word.</p> <p>9 It was -- it was not a full description of some</p> <p>10 additional points which were then later dealt</p> <p>11 with, by which I mean the long positions as</p> <p>12 previously described related to a part of the</p> <p>13 negotiation, which by the sale hearing had</p> <p>14 changed, and by the sale hearing the securities</p> <p>15 that had previously formed that 70 billion long</p> <p>16 position were no longer either in character or</p> <p>17 by type the same securities that were going to</p> <p>18 be acquired, because by the sale hearing, there</p> <p>19 had been the intervention of a repo transaction</p> <p>20 which changed the meaning of that 70 billion in</p> <p>21 any event.</p> <p>22 Q. Now, did Barclays understand whether</p> <p>23 the 47.4 that Ms. Fife represented to the court,</p> <p>24 whether that included the repo securities?</p> <p>25 MR. STERN: Objection to the form.</p>

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<p>1 J. HUGHES</p> <p>2 Asked and answered.</p> <p>3 A. Again, I don't know what Lori Fife</p> <p>4 included. I think my best reading of the</p> <p>5 transcript is that she intended to include</p> <p>6 securities that were -- that formed -- that were</p> <p>7 part of the repo. I can't say whether she had</p> <p>8 included all of those or whether she had</p> <p>9 included additional securities. But again, they</p> <p>10 were all estimations, whether they referred to</p> <p>11 the repo securities or some of the repo</p> <p>12 securities or whether it referred to other</p> <p>13 assets.</p> <p>14 Q. Did Barclays understand the</p> <p>15 47.4 billion number to include the 15c3 asset?</p> <p>16 MR. STERN: Objection to the form.</p> <p>17 Asked and answered.</p> <p>18 A. I don't think she was referring to the</p> <p>19 15c3 asset at that point in time. But again, I</p> <p>20 don't know, for the reasons I've already</p> <p>21 described.</p> <p>22 Q. Did you understand that Ms. Fife's</p> <p>23 47.4 billion included the clearance box assets?</p> <p>24 MR. STERN: Objection to the form.</p> <p>25 Asked and answered.</p>	<p>1 J. HUGHES</p> <p>2 A. I don't know the constituent parts of</p> <p>3 the 47.4. As I said earlier, the clearance box</p> <p>4 assets were clearly within the definition of</p> <p>5 purchased assets. And so whether or not they</p> <p>6 were, I think was not a matter of significance</p> <p>7 at the time.</p> <p>8 MR. STERN: I think it is after</p> <p>9 1 o'clock. Are we going to take a lunch</p> <p>10 break?</p> <p>11 MR. MAGUIRE: Yeah. We will go</p> <p>12 another five or ten minutes, and then we</p> <p>13 will take a break.</p> <p>14 Q. Did you understand the margin to be</p> <p>15 included in the 47.4? Did Barclays understand</p> <p>16 that?</p> <p>17 MR. STERN: Objection to the form.</p> <p>18 A. I'm not -- I don't think that the</p> <p>19 people who were present at the time were</p> <p>20 considering specific assets, specific valuations</p> <p>21 and whether they were at that point in time</p> <p>22 included in the number.</p> <p>23 And again, I think the reason for that</p> <p>24 is that the margin and other specific assets</p> <p>25 that were clearly purchased assets were already</p>
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<p>1 J. HUGHES</p> <p>2 attended to. But I don't recall anybody at</p> <p>3 Barclays break -- attempting to break down that</p> <p>4 47.4 number at the time, because I don't think</p> <p>5 anybody thought it was necessary or worthwhile</p> <p>6 to do so.</p> <p>7 Q. Did Barclays understand that the</p> <p>8 47.4 billion did not include a number of</p> <p>9 additional assets that were part of the sale?</p> <p>10 MR. STERN: Objection to the form.</p> <p>11 A. It --</p> <p>12 MR. STERN: Let me hear the question</p> <p>13 again.</p> <p>14 MR. MAGUIRE: Well, let me put it</p> <p>15 slightly differently.</p> <p>16 Q. I take it from your earlier testimony</p> <p>17 that Barclays' view at the time of the sale</p> <p>18 hearing was, when Ms. Fife said, mentioned the</p> <p>19 47.4 billion dollar number, Barclays understood</p> <p>20 that did not -- that referred to some but by no</p> <p>21 means all of the assets that Barclays was</p> <p>22 acquiring?</p> <p>23 MR. STERN: Objection to the form.</p> <p>24 You can answer.</p> <p>25 A. I think it by definition did not</p>	<p>1 J. HUGHES</p> <p>2 include all of the assets, because all of the</p> <p>3 assets had been described already in the APA.</p> <p>4 So she didn't need to refer to that part of the</p> <p>5 APA, because it was clear to all that that was</p> <p>6 the better description of the transaction and</p> <p>7 the better description of the assets.</p> <p>8 Why she used that particular number, I</p> <p>9 haven't been able to establish.</p> <p>10 Q. Did Barclays understand that the</p> <p>11 additional assets that were not included,</p> <p>12 whatever they were, that were not included in</p> <p>13 the 47.4, that the court would want or need to</p> <p>14 know what the value of those assets was in order</p> <p>15 to understand the economics of the deal?</p> <p>16 MR. STERN: Objection to the form.</p> <p>17 A. Well, first of all, as I said earlier,</p> <p>18 I don't view any of the assets that you are</p> <p>19 referring to as additional assets, first and</p> <p>20 foremost.</p> <p>21 And I'm not meaning to be pedantic.</p> <p>22 It is just by definition impossible that if --</p> <p>23 that an identified asset that is already part of</p> <p>24 the business that we were acquiring would be an</p> <p>25 additional asset.</p>

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<p>1 J. HUGHES</p> <p>2 I think the court, as I have said</p> <p>3 again earlier, heard descriptions of some of the</p> <p>4 assets and heard sufficient descriptions of</p> <p>5 assets and liabilities to enable it to take</p> <p>6 those estimations, add that to the additional</p> <p>7 factors that were important, to determine</p> <p>8 whether to approve the transaction or not, and</p> <p>9 it came to an appropriate conclusion.</p> <p>10 Q. Did the court know the total value of</p> <p>11 the assets that Barclays was acquiring at the</p> <p>12 time that it approved the deal?</p> <p>13 MR. STERN: I think at this point this</p> <p>14 question has now been asked three or four</p> <p>15 times. I'm really -- I think at this point</p> <p>16 we should take a break for lunch and maybe</p> <p>17 you should review your outline.</p> <p>18 MR. MAGUIRE: Why don't we get this</p> <p>19 answer, and then maybe you are right.</p> <p>20 MR. STERN: I am actually going to</p> <p>21 instruct him not to answer, because I think</p> <p>22 this is now getting past the point. So if</p> <p>23 you have another question, you can ask that.</p> <p>24 MR. MAGUIRE: All right. We will take</p> <p>25 our break at this point and reserve our</p>	<p>1 J. HUGHES</p> <p>2 rights.</p> <p>3 MR. STERN: Good.</p> <p>4 (Luncheon recess)</p> <p>5 BY MR. MAGUIRE:</p> <p>6 Q. When did margin become part of the</p> <p>7 sale transaction?</p> <p>8 A. When did margin become part of the</p> <p>9 sale transaction? At the beginning.</p> <p>10 Q. In the original APA?</p> <p>11 A. It was agreed orally before it ever</p> <p>12 got reduced to writing in the APA, but it was</p> <p>13 subsequently included in the APA.</p> <p>14 Q. When you say it was agreed orally, who</p> <p>15 from Barclays agreed to that?</p> <p>16 A. I haven't asked that specific question</p> <p>17 of anybody, so I can't tell you a specific</p> <p>18 answer. The people negotiating on behalf of</p> <p>19 Barclays at that time, and indeed throughout,</p> <p>20 included the names we mentioned before, Michael</p> <p>21 Klein, Archie Cox.</p> <p>22 There were also a number of people in</p> <p>23 the early part of the week of the 15th</p> <p>24 discussing certain types of assets, and it is</p> <p>25 probable, though I haven't yet checked, that</p>
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<p>1 J. HUGHES</p> <p>2 there was a discussion among some of those</p> <p>3 people with respect to the exchange-traded</p> <p>4 derivatives.</p> <p>5 Q. Let me be clear, because you referred</p> <p>6 in your answer to exchange-traded derivatives.</p> <p>7 I'm going to address my questions specifically</p> <p>8 to margin as opposed to exchange-traded</p> <p>9 derivatives.</p> <p>10 Do you know whether there was a</p> <p>11 discussion between Barclays and anyone at Lehman</p> <p>12 concerning margin, specifically using that word</p> <p>13 "margin" as opposed to some general reference to</p> <p>14 exchange-traded derivatives?</p> <p>15 MR. STERN: I am going to object to</p> <p>16 the form.</p> <p>17 You can answer if you understand the</p> <p>18 term.</p> <p>19 A. I was going to ask you, what do you</p> <p>20 mean by "margin"?</p> <p>21 Q. You have referred to, earlier, to</p> <p>22 collateral that was at exchanges where Lehman</p> <p>23 was a member.</p> <p>24 A. Yeah.</p> <p>25 Q. I take that as meaning margin.</p>	<p>1 J. HUGHES</p> <p>2 Are you aware of any discussions</p> <p>3 between Barclays and Lehman concerning the</p> <p>4 collateral that Lehman had deposited with the</p> <p>5 exchanges where it traded derivatives?</p> <p>6 A. I believe there were discussions</p> <p>7 between representatives of Barclays and</p> <p>8 representatives of Lehman and indeed involving</p> <p>9 representatives of the trustee, possibly also</p> <p>10 the creditors committee, between Friday, the</p> <p>11 19th, and the 22nd, which related to margin as</p> <p>12 you have just described it.</p> <p>13 I'm not aware that there was any</p> <p>14 specific reference to margin prior to the 19th.</p> <p>15 Nor does that surprise me.</p> <p>16 Q. And it doesn't surprise you because</p> <p>17 you understand margin to be included in the</p> <p>18 transfer of exchange-traded derivatives?</p> <p>19 A. It would be shocking to me if anybody</p> <p>20 thought it was otherwise.</p> <p>21 Q. Are you aware of any decision on the</p> <p>22 part of Barclays to acquire any part of Lehman's</p> <p>23 futures business independently of whether this</p> <p>24 sale transaction closed?</p> <p>25 A. I'm not sure I understand. I'm not</p>

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<p>1 J. HUGHES 2 sure I understand the question. 3 Q. Are you aware -- did Barclays have any 4 discussions with anyone from Lehman or the 5 Chicago Mercantile Exchange concerning taking on 6 any part of Lehman's futures business? 7 MR. STERN: Objection, to the form. 8 A. When? 9 Q. In the week or so prior to the sale. 10 A. When you say the week or so prior to 11 the sale, do you mean the week preceding the 12 19th or the week preceding the 15th? 13 Q. Any of that two-week period up to the 14 19th. 15 A. There were -- there was an agreement 16 reached during the week of the 15th, and indeed 17 an agreement -- that agreement was recorded in 18 the APA, certainly by the 17th, when it was 19 filed with the court, for Barclays to acquire, 20 among other things, the FCM business of Lehman 21 Brothers. In other words, the futures 22 commission merchant business of Lehman Brothers, 23 which included the exchange-traded derivatives 24 business. 25 And that being the agreement, it was</p>	<p>1 J. HUGHES 2 clear to the parties that margin, as you 3 previously described it, among other things, was 4 included in that part of the agreement. 5 Q. And you say it was clear because -- 6 can you explain why it was clear? 7 A. Because the -- because it was clear 8 that the agreement was to transfer the assets 9 and all the assets and liabilities of that 10 business. So that necessarily would include 11 collateral, margin held in connection with that 12 business. 13 Q. Did Barclays provide any guarantee to 14 the Chicago Mercantile Exchange of any -- of 15 Lehman's settlement obligations at any time 16 prior to September 22? 17 A. Any guarantee to the CME prior to the 18 September -- prior to September 22? 19 Q. Yes. 20 A. Not that I am aware of. 21 Q. Did Barclays consider providing such a 22 guarantee to the CME at any time prior to 23 September 22? 24 A. I'm not aware of any such 25 consideration. I think it unlikely that</p>
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<p>1 J. HUGHES 2 Barclays would have given a guarantee with 3 respect to aspects of the sale transaction 4 before closing. Or at least before it was clear 5 what the closing terms were going to be. 6 Q. I am going to ask you about your 7 testimony concerning margin and the APA, so I 8 will show you a copy of the final APA. It is 9 without all the schedules, but it has all the 10 provisions. 11 Can you point me, sir, to where the 12 APA undertook to convey margin to Barclays. 13 A. I think the first reference comes in 14 the definition of "business." And I should just 15 add that I have not reviewed the asset purchase 16 agreement with that specific question in mind. 17 So for me to be able to pick out quickly each 18 and every part of the APA which is relevant to 19 assessing whether the margin associated with the 20 futures commission merchant business, for 21 example, was included, would obviously take me a 22 while. There are several aspects of it. 23 But it certainly starts with an -- 24 with the definition of business, which as you 25 will see on page 2 includes the words "business</p>	<p>1 J. HUGHES 2 as a futures commission merchant." In my view, 3 that includes, particularly if one adds other -- 4 I think there are additional facets of the 5 agreement that are relevant for this purpose, 6 but I would have to look through it to be 7 absolutely sure, but I think that the 8 acquisition of the futures commission merchant 9 business includes margin, collateral held in 10 connection with that business. 11 Q. So is it Barclays' understanding that 12 this definition picks up any margin that Lehman 13 had at any exchanges? 14 MR. STERN: The only concern I have 15 about this is whether you're calling for 16 privileged information. If you are asking 17 Mr. Hughes to interpret the contract, my 18 concern is that is -- his interpretation of 19 the contract is privileged. 20 MR. MAGUIRE: If you want to direct 21 him not to answer, we can move along. 22 All I'm looking for is Barclays' -- 23 Barclays has an understanding, it has a 24 claim. I'm simply asking where in the 25 contract is the source of that claim.</p>

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<p>1 J. HUGHES</p> <p>2 MR. STERN: You are asking about a</p> <p>3 contract interpretation. Let me just</p> <p>4 confer.</p> <p>5 Let's just step out for a second and</p> <p>6 confer about that.</p> <p>7 MR. MAGUIRE: The record will reflect</p> <p>8 that the witness has stepped out of the room</p> <p>9 with his counsel.</p> <p>10 (Pause)</p> <p>11 (Mr. Stern and the witness return to</p> <p>12 the room)</p> <p>13 MR. STERN: I have just conferred with</p> <p>14 the witness off the record, and I am going</p> <p>15 to instruct the witness not to answer</p> <p>16 questions that call for interpretation of</p> <p>17 the contract, because that does invade the</p> <p>18 privilege.</p> <p>19 MR. MAGUIRE: Just so we are clear,</p> <p>20 you are directing the witness not to answer</p> <p>21 the last question?</p> <p>22 MR. STERN: Correct.</p> <p>23 MR. MAGUIRE: And any other questions</p> <p>24 asking for Barclays' understanding of</p> <p>25 provisions of the contract?</p>	<p>1 J. HUGHES</p> <p>2 MR. STERN: Correct. Anything calling</p> <p>3 for interpretation, correct.</p> <p>4 Q. Did you understand that Barclays</p> <p>5 undertook any additional liabilities or assumed</p> <p>6 any additional liabilities over the weekend of</p> <p>7 the clarification letter? By additional, I mean</p> <p>8 any liabilities that it had not already agreed</p> <p>9 to under the APA.</p> <p>10 A. I don't think so. no. That I can now</p> <p>11 recall.</p> <p>12 Q. You're familiar with the transfer and</p> <p>13 assumption agreement?</p> <p>14 A. I think so, yes.</p> <p>15 Q. Did that in any way change the</p> <p>16 economics or the fundamentals of the APA?</p> <p>17 A. Again, I have been instructed by my</p> <p>18 counsel not to interpret contracts. My answer</p> <p>19 is not an interpretation of the contract.</p> <p>20 My -- Barclays' understanding of the</p> <p>21 transfer and assumption agreement in essence is</p> <p>22 that it was a document designed to achieve a</p> <p>23 couple of things. One, to assure the OCC that</p> <p>24 certain liabilities at Lehman Brothers and</p> <p>25 certain assets of Lehman Brothers were to be</p>
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<p>1 J. HUGHES</p> <p>2 transferred in a particular way.</p> <p>3 And secondly, it was a more detailed</p> <p>4 description of what would happen to certain</p> <p>5 portions of the exchange-traded derivatives</p> <p>6 business as a result of the sale.</p> <p>7 My understanding further is that the</p> <p>8 TAA was the subject of discussions among the</p> <p>9 OCC, the trustee, Barclays, possibly also</p> <p>10 including the estate and ultimately the LBHI</p> <p>11 estate and the creditors committee. But most</p> <p>12 notably among -- an understanding among the OCC,</p> <p>13 the trustee and Barclays with respect to the</p> <p>14 transfer of OCC margin.</p> <p>15 And I believe that the agreement, when</p> <p>16 ultimately signed, was the culmination of quite</p> <p>17 a lot of communications among those parties.</p> <p>18 Again, designed primarily to assure the OCC what</p> <p>19 would happen to margin. And included in those</p> <p>20 communications, as I understood them, was some</p> <p>21 urgency on the part of OCC to have the trustee</p> <p>22 agree that all forms of margin, whatever their</p> <p>23 description, should -- needed to be agreed to be</p> <p>24 delivered -- needed to be delivered to Barclays</p> <p>25 in order to assure the proper transfer of all of</p>	<p>1 J. HUGHES</p> <p>2 that collateral.</p> <p>3 I believe there were many, many</p> <p>4 communications from the OCC and indeed back from</p> <p>5 the trustee that record that understanding among</p> <p>6 those parties, that all of that collateral, in</p> <p>7 whatever form, was to go to Barclays. I believe</p> <p>8 that what was ultimately signed -- sorry, the</p> <p>9 terms ultimately signed and encapsulated in the</p> <p>10 transfer and assumption agreement not only did</p> <p>11 establish the agreement for the transfer of all</p> <p>12 of that margin, but was consistent with the</p> <p>13 broader agreement that had already been reached</p> <p>14 among the parties and which everybody at that</p> <p>15 point plainly was aware of.</p> <p>16 So the TAA, as you described it, was</p> <p>17 at a slightly greater level of detail than had</p> <p>18 been mentioned in the APA, but was entirely</p> <p>19 consistent with it, and I think was, as it</p> <p>20 related to the OCC, the effective document that</p> <p>21 it needed to properly transfer collateral that</p> <p>22 was previously with LBI in connection with</p> <p>23 its -- held by LBI in connection with its</p> <p>24 business as an FCM to Barclays.</p> <p>25 Q. Did the TAA add any assets that</p>

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1 J. HUGHES
2 were -- to the sale that Barclays was taking?
3 MR. STERN: I am going to instruct the
4 witness not to answer this, because again,
5 you're calling for an interpretation of the
6 TAA. Your 30(b)(6) topic calls for
7 information concerning the negotiation and
8 drafting of the TAA. I don't believe it
9 calls for interpretation of the TAA.
10 So I'll instruct you not to answer.
11 If you want to ask him questions about
12 the course of the negotiation and drafting
13 of that document, that's fine.
14 Q. In entering into the TAA, did Barclays
15 intend to obtain any assets that it was not
16 already obtaining under the APA?
17 A. I think in discussing through its
18 representatives the terms of the APA, Barclays'
19 intention was to insure that there was nothing
20 in that agreement inconsistent with the
21 acquisition of the business that it had already
22 agreed to acquire. And I think that best
23 describes Barclays' intention at the time.
24 Q. So I guess I'm still trying to
25 understand, when entering into it, did Barclays

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1 J. HUGHES
2 participated in or were present at discussions
3 during the closing weekend relating to margin or
4 collateral held in connection with the
5 derivatives business.
6 But I am not aware of any specific
7 communication, as I said, of the type you
8 described. Nor indeed have I asked that
9 question in preparing for today.
10 Q. Are you aware of any such disclosure
11 to the trustee?
12 A. When you say such disclosure, will you
13 do me the favor of repeating how you define
14 disclosure?
15 Q. Any disclosure by Barclays of the
16 amount of margin that was being conveyed to
17 Barclays under the sale?
18 A. And to what time period are you
19 referring?
20 Q. This is anytime prior to the closing.
21 A. It's possible that there were
22 communications referring to valuations, but I'm
23 not aware that Barclays made any representation
24 to anybody about how much margin there may have
25 been or in what form it may have -- or what form

1 J. HUGHES
2 intend that there were any assets that it would
3 get at the OCC that Lehman had at the OCC that
4 Barclays was not already acquiring under the
5 APA?
6 MR. STERN: I think again this calls
7 for an interpretation of both the APA and
8 the TAA. So I am going to instruct the witness
9 not to answer.
10 If you ask him questions about
11 communications and negotiations concerning
12 the TAA, that I think is consistent with
13 your 30(b)(6) topic number 20.
14 Q. And I take it you're following your
15 counsel's advice?
16 A. Yes.
17 Q. Is Barclays aware of any disclosure
18 that Barclays made to the creditors committee
19 concerning the amount of margin that was being
20 transferred to Barclays as a result of the sale?
21 A. I'm not aware of actual disclosures by
22 Barclays to the creditors committee to that
23 effect. It is possible, though I don't know
24 with any certainty, that representatives of the
25 creditors committee were involved in or part of,

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2 it may have taken, because I don't think at that
3 point Barclays was able to establish precisely
4 either the total or the form.
5 I should also say, that given what I
6 have already said about what would be
7 surprising, indeed shocking, about the transfer
8 of the business that did not include all of the
9 margin in whatever form, that it wouldn't then I
10 think have appeared as a likely important part
11 of the discussion.
12 But it is possible that there were
13 estimations of related values that had been
14 provided by Lehman during the course of the
15 week. It's possible that there had been, you
16 know, discussion with respect to those values,
17 possible that the trustee was involved in or
18 had -- had sight of some of those estimations of
19 value.
20 But again, I think in common with all
21 other valuations, not only were they, as I have
22 said I think a number of times, extremely
23 uncertain, they were also, again as I have said
24 many times, provided by Lehman, and they weren't
25 Barclays' numbers and Barclays' estimations.

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<p>1 J. HUGHES</p> <p>2 Q. I'll show you a document previously</p> <p>3 marked as Exhibit 19. So you will see on both</p> <p>4 the assets and the liability side the term</p> <p>5 "derivatives" appears.</p> <p>6 A. Yes.</p> <p>7 Q. In each case, the same number applies,</p> <p>8 which is 4 and a half billion dollars.</p> <p>9 A. Yes.</p> <p>10 Q. Did that number include, either</p> <p>11 column, any margin?</p> <p>12 A. I don't know.</p> <p>13 Q. Have you done anything to check</p> <p>14 whether that was the case?</p> <p>15 A. No.</p> <p>16 Q. If you wanted to determine whether</p> <p>17 this 4 and a half billion dollar number includes</p> <p>18 margin, who would you turn to?</p> <p>19 A. I'm tempted to make a joke, but I</p> <p>20 won't.</p> <p>21 I really don't know, because I don't</p> <p>22 know who -- I don't know who composed this</p> <p>23 document. I believe it is a document that was</p> <p>24 produced, put together and produced at some</p> <p>25 point by somebody at Lehman Brothers, but I</p>	<p>1 J. HUGHES</p> <p>2 don't know who in fact entered the -- either the</p> <p>3 words "derivatives" or the numbers 4.5.</p> <p>4 Q. And you don't know whether anyone at</p> <p>5 Barclays has any such information?</p> <p>6 A. I think there are people at Barclays</p> <p>7 who are familiar with this document and -- but I</p> <p>8 don't know, nor have I asked if we know -- if</p> <p>9 anybody at Barclays specifically knows its</p> <p>10 actual -- who the scrivener was of this</p> <p>11 document. It may be that it has been asked in</p> <p>12 the past, but I certainly don't recall it now.</p> <p>13 Q. I'm not so much interested in the</p> <p>14 scrivener as much as the person who can tell us</p> <p>15 whether the 4 and a half billion dollar number</p> <p>16 includes margin.</p> <p>17 A. It would have to be somebody at Lehman</p> <p>18 Brothers, I would think, to be sure. Because as</p> <p>19 I say, I believe it to be produced by somebody</p> <p>20 at Lehman Brothers. So I would have thought</p> <p>21 that would be the best place to ask.</p> <p>22 Q. And you haven't checked with anybody</p> <p>23 at Barclays today who participated in the</p> <p>24 transaction either on the Barclays side or then</p> <p>25 as a legacy Lehman person, with respect to the</p>
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<p>1 J. HUGHES</p> <p>2 specific question whether the 4 and a half</p> <p>3 billion dollars includes margin?</p> <p>4 A. I have not asked that specific</p> <p>5 question.</p> <p>6 I should perhaps add that the -- my</p> <p>7 belief is that this document refers to a stage</p> <p>8 in the transaction negotiation which became a</p> <p>9 stage in the transaction, and to a form of part</p> <p>10 of the transaction, which soon, soon hereafter</p> <p>11 changed.</p> <p>12 Q. I'm going to ask you -- maybe it will</p> <p>13 be easier if I showed you.</p> <p>14 MR. MAGUIRE: We will mark as</p> <p>15 Exhibit 561C document Bates stamped WGM</p> <p>16 Lehman E00013236 through 46.</p> <p>17 (Exhibit 561C, document Bates stamped</p> <p>18 WGM Lehman E00013236 through 46 marked for</p> <p>19 identification, as of this date.)</p> <p>20 Q. Are you familiar with this document,</p> <p>21 sir?</p> <p>22 MR. STERN: I guess the first question</p> <p>23 is whether he has ever seen it before.</p> <p>24 A. I'm not sure that I have seen this</p> <p>25 document before.</p>	<p>1 J. HUGHES</p> <p>2 Q. You see that it bears September 20,</p> <p>3 the Saturday date at the top. Do you see that,</p> <p>4 sir?</p> <p>5 A. I see where it says "WGM final,</p> <p>6 September 20, 2008 a.m."</p> <p>7 Q. And do you see that there is</p> <p>8 highlighted text in the middle of "Purchased</p> <p>9 Assets" on the first page which refers to</p> <p>10 purchased assets that have a book value of</p> <p>11 approximately 45.5 billion dollars? Do you see</p> <p>12 that?</p> <p>13 A. I do see that language there, yes.</p> <p>14 Q. And this refers to what had previously</p> <p>15 in the APA had a book value of approximately</p> <p>16 70 billion dollars. Do you see that?</p> <p>17 MR. STERN: Objection to the form.</p> <p>18 A. The language says, "It being</p> <p>19 understood that the long positions referred to</p> <p>20 in Clause D of purchased assets do not have a</p> <p>21 book value of approximately 70 billion, but</p> <p>22 rather have a book value of approximately</p> <p>23 45.5 billion."</p> <p>24 Am I referring to the right piece?</p> <p>25 Q. Yes, we are together, looking at the</p>

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2 same thing.
3 MR. STERN: I think if you are going
4 to ask Mr. Hughes about this paragraph, I
5 think you should have a chance to read the
6 entire paragraph. I don't know if you have
7 done that yet.
8 A. I haven't yet because I don't know if
9 I need to.
10 Q. I don't think you need to. Do
11 whatever you want to do. Let me give you the
12 question, and you can decide whether you --
13 MR. STERN: Fair enough.
14 Q. Did Barclays understand by Saturday,
15 September 20, that the Lehman book value of the
16 repo assets was approximately 45.5 billion
17 dollars?
18 MR. STERN: If you know that fact, you
19 can answer.
20 I will object to the form because I
21 think the question is a little bit
22 confusing.
23 A. Could you repeat the question.
24 Q. Sure.
25 Did Barclays understand by Saturday,

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2 earlier by saying that there was an estimation
3 earlier in the week that the long positions as
4 you have described them were valued at
5 approximately 70 billion dollars.
6 Q. Right, right. And did Barclays
7 understand that as events had transpired and the
8 deal had changed, by Saturday, the book value of
9 the long positions that were being transferred
10 on Lehman's books was not 70 billion but in fact
11 was going to be approximately 45.5 billion?
12 MR. STERN: Objection to the form.
13 A. No, Barclays did not understand that.
14 Q. What did Barclays understand the book
15 value, Lehman book value was of the assets that
16 were being transferred that had previously been
17 described as long positions?
18 A. I don't think Barclays had an
19 understanding at the time you mention of what
20 Lehman's book values were. I don't think we had
21 knowledge of what Lehman's book values were
22 attributed to those same assets.
23 Q. Did Barclays have an understanding --
24 A. Can I just be clear. You're referring
25 to a particular categorized 70 billion dollars

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2 September 20, that the Lehman book value of the
3 repo assets was approximately 45.5 billion
4 dollars?
5 MR. STERN: Objection to the form.
6 A. Can I just be clear about which assets
7 you are referring to.
8 Q. Let me try it differently then. You
9 understood that under the APA there was
10 70 billion dollars of assets that it was agreed
11 would be transferred to Barclays?
12 MR. STERN: Objection to the form.
13 A. I -- that's incorrect. By --
14 certainly by September, the 20th --
15 Q. No, no. I'm just talking --
16 A. -- that was not part of -- that was
17 not the understanding.
18 Q. Right, right. I am simply talking
19 about the original terms of the APA as it was
20 originally executed, it called for the transfer
21 of assets that had -- this is the long
22 positions -- that had a value of approximately
23 70 billion dollars?
24 MR. STERN: Objection to the form.
25 A. I think I've answered that question

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2 of assets which had previously been described as
3 long positions. My answer is that on -- at the
4 time you're asking the question, that at that
5 time, Barclays, as far as I'm aware, had no
6 knowledge of the book values that Lehman
7 Brothers associated with that categorized set of
8 assets.
9 MR. STERN: In other words, as of
10 September 20.
11 A. As of September 20.
12 Q. And what about with respect to the
13 clearance box assets? Did Barclays have an
14 understanding as to what the Lehman book value
15 was of the clearance box assets?
16 MR. STERN: Objection. I think, you
17 know, the use of the phrase "book value"
18 here is ambiguous.
19 But if you can answer, go ahead.
20 A. I'm not aware that Lehman Brothers
21 ever referred to values of clearance box
22 securities in terms of book value. I believe
23 that that category of assets which became known
24 as the clearance box assets was first
25 identified -- it was identified by Lehman

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Brothers as being worth in their view approximately, I think 1.9 billion dollars. I think that was the first -- roughly that number was the first estimation.

But there was no use of the term "book value" at that point in time. Nor am I actually aware of any reference to clearance box assets by the use of the term "book value."

Q. Have you asked, in preparation for this or otherwise, any of the Barclays representatives who were at the sale hearing whether they understood the 47.4 billion dollar number that Ms. Fife represented to the court to include 1.9 billion dollars in book assets -- I am sorry -- in clearance box assets, in the 45 and a half billion dollars of other assets?

MR. STERN: Objection, this has been asked and answered multiple times.

You can answer again.

A. Without repeating our prior relevant answers to your questions, but if I may be lawyerly for a second, incorporating them into this answer, I don't know how Lori Fife came to that number. I don't know whether it did or did

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not include, nor does anybody who was present for Barclays at the time, in my belief, know whether or not the clearance box assets were included in that number.

Q. Did you ask the people who attended specifically whether they considered the 47.4 to have been made up of the clearance box assets, plus an additional 45 and a billion dollars of assets?

MR. STERN: I am going to instruct you not to answer to your conversations with people, but you can testify to the facts that you learned. But I think you have already answered that, so I am just going to instruct you not to answer.

Q. Sir, I am going to show you a document we have previously marked as Exhibit 49. Have you reviewed this in preparation?

A. I don't know whether I have seen this document before or not, either in preparation for this deposition or otherwise. On the face of the cover, it is described as a revised clarification letter. I have discussed the topic of revised -- of revisions to and the

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negotiations surrounding the clarification letter, and I am aware that there were several drafts of what ultimately was agreed to as the final clarification letter.

I'm also aware that, from my participation in the transaction and the events in question, that there was, at the time these revisions were being made and the negotiations were ongoing, a number of efforts by or -- yes, by the lawyers representing Barclays and the lawyers representing Lehman to, unsurprisingly I guess, put on paper what the negotiations had delivered in terms of an agreement at any point in time.

I think it is worth just noting that, as you may have heard from others, this was a particularly frantic period. There were enormous numbers of lawyers present, trying very hard to keep up with the flow of negotiation and the progression of negotiation, and it's clear to me from discussions I have had about the facts and circumstances associated with this effort to conclude the clarification letter. But there were many points in time at which,

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unfortunately, lawyers for Lehman, lawyers for Barclays, and others in attendance may or may not have been fully knowledgeable about where the discussions had actually got to.

So I have gone through the topic as I mentioned of drafts of clarification letters, revisions to clarification letters, and I think it is important to recognize the conditions in which those revisions and negotiations took place.

Q. If you turn to page 2 of the document, you will see at the bottom of the page, there is a term D that talks about excluded assets, and that excludes cash. Do you see that?

A. I don't. I see paragraph D. Can I read it?

MR. STERN: What page are we on in terms of Bates numbers?

MR. MAGUIRE: The one ending in 65.

MR. STERN: I think we are on a different page than you are. You are looking at the redline?

A. Mine, page 2 of mine finishes at --

MR. STERN: I think it is easier if we

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<p>1 J. HUGHES</p> <p>2 refer to Bates numbers, and you should read</p> <p>3 as much of this as you need to answer the</p> <p>4 question.</p> <p>5 Q. It is page BCI-CG 00024965.</p> <p>6 A. OK, I have that page. Is this the</p> <p>7 same document as the one you -- that precedes it</p> <p>8 in the exhibit? Or is it not?</p> <p>9 Q. I think the document that precedes it</p> <p>10 looks like the cover e-mail.</p> <p>11 MR. STERN: Well, we have a clean</p> <p>12 version and we have a redline version. And</p> <p>13 I think what Mr. Hughes is asking is whether</p> <p>14 the clean corresponds to the redline. But</p> <p>15 you're not testifying. So I --</p> <p>16 MR. MAGUIRE: I'm not the witness.</p> <p>17 MR. STERN: Just so you know, Bill, we</p> <p>18 have a document here that has clean and then</p> <p>19 it has a redline. But you're pointing us to</p> <p>20 the redline.</p> <p>21 MR. MAGUIRE: Exactly, yeah.</p> <p>22 A. Can I read the paragraph?</p> <p>23 Q. Sure.</p> <p>24 A. OK, I've read it.</p> <p>25 Q. I would like you to focus right after</p>	<p>1 J. HUGHES</p> <p>2 the quote, "Excluded Assets." You'll see where</p> <p>3 the excluded assets includes cash, and then</p> <p>4 there is a carve-out that excluded assets shall</p> <p>5 not include. Do you see that?</p> <p>6 A. Yes.</p> <p>7 Q. One of the things in the carve-out is</p> <p>8 margin guarantee fund deposit. Do you see that</p> <p>9 language?</p> <p>10 A. Do you mean in the subclause which has</p> <p>11 a capital A?</p> <p>12 Q. Yes.</p> <p>13 A. So you mean, you are referring to the</p> <p>14 words "whether as margin, guarantee fund deposit</p> <p>15 or in any other form." Is that what you are</p> <p>16 referring to?</p> <p>17 Q. Exactly.</p> <p>18 A. I see the language there, yeah.</p> <p>19 Q. Now, was it Barclays' intentions in</p> <p>20 inserting this language to add anything to the</p> <p>21 transaction, or was it Barclays' understanding</p> <p>22 that the margin and guarantee fund was already</p> <p>23 part of the transaction?</p> <p>24 MR. STERN: I believe that calls for</p> <p>25 privileged information, and I'll instruct</p>
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<p>1 J. HUGHES</p> <p>2 you not to answer.</p> <p>3 You can ask about communications</p> <p>4 concerning this clause and if the witness is</p> <p>5 familiar with them.</p> <p>6 Q. Who proposed this addition?</p> <p>7 A. I have no idea.</p> <p>8 Q. Have you done anything in preparation</p> <p>9 to determine who proposed this insertion?</p> <p>10 A. As I said, I have spoken with</p> <p>11 representatives of Barclays, and both internal</p> <p>12 and external, to review the topic of drafts and</p> <p>13 revisions to the clarification letter. I have</p> <p>14 not asked the specific question that you just</p> <p>15 posed to me.</p> <p>16 Q. If you'll turn to the previous page.</p> <p>17 A. Can I just add that part of the reason</p> <p>18 for that is that I didn't think it -- I didn't</p> <p>19 think it was important.</p> <p>20 Q. OK. Do you understand that the</p> <p>21 references to margin and guarantee fund deposit</p> <p>22 were deleted from the clarification letter?</p> <p>23 MR. STERN: Objection to the form.</p> <p>24 Actually I'm going to instruct you not to</p> <p>25 answer, because again here, we are getting</p>	<p>1 J. HUGHES</p> <p>2 into the area of contract interpretation.</p> <p>3 If you want to show him a subsequent</p> <p>4 draft and how the subsequent draft changed</p> <p>5 and get his testimony on what he knows</p> <p>6 concerning how that occurred, that's fine.</p> <p>7 Q. I take it you are going to follow your</p> <p>8 counsel's instruction?</p> <p>9 A. I will.</p> <p>10 Q. Sir, I'll --</p> <p>11 A. But let me add the following. I'm not</p> <p>12 aware of any point during the negotiation of the</p> <p>13 clarification letter at which Barclays changed</p> <p>14 its views about -- or that it heard anything</p> <p>15 different from Lehman Brothers with respect to</p> <p>16 margin, guarantee funds or anything that one</p> <p>17 might describe as collateral or margin relating</p> <p>18 to the exchange-traded derivatives businesses.</p> <p>19 So it is possible that there were</p> <p>20 drafts that referred to some of those issues,</p> <p>21 and you pointed at least to what appears to be</p> <p>22 one draft which does. Why it is there, I can't</p> <p>23 tell you.</p> <p>24 Q. And in preparation I take it you have</p> <p>25 not gone through the specific drafts to see what</p>

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1 J. HUGHES
2 happened and see how the clarification letter
3 evolved?
4 A. I have been shown different drafts and
5 I have had highlighted to me different language
6 used in different drafts. I think that's --
7 that's about as much as I can say about what I
8 have done with respect to the language in the
9 drafts.
10 Q. And you also mentioned that you had
11 discussions with people about the drafting
12 process?
13 A. Yeah, that's with my external lawyers.
14 Q. And who were those?
15 A. Representatives of Boies Schiller,
16 Cleary Gottlieb and Sullivan & Cromwell.
17 Q. What was the purpose of your
18 discussions with those counsel?
19 MR. STERN: Well, part of the
20 discussions were preparation for deposition,
21 and other parts of the discussion were
22 privileged communications. Well, they are
23 all privileged, but part of the discussions
24 related to getting information so that
25 Mr. Hughes could testify.

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1 J. HUGHES
2 instruct you not to answer. I don't want to
3 intrude on what was discussed between you
4 and Cleary and Boies Schiller and Sullivan &
5 Cromwell.
6 But if you want to ask what facts he
7 knows concerning the course of those
8 negotiations, that's fine.
9 Q. Sir, what communications occurred
10 between -- what discussions occurred between
11 Cleary and their counterparts after the
12 reference to margin and guarantee funds deposit
13 was deleted from the draft clarification letter?
14 MR. STERN: Objection to the form.
15 You can answer if you know.
16 A. I don't know the answer to the
17 question. Nor do I actually fully understand
18 the question, given that -- I don't know who
19 specifically conducted negotiations of the type
20 we are referring to or if indeed they actually
21 occurred. So I can't help you with that.
22 Q. Can you tell us about any discussions
23 that anyone at Cleary had with any of their
24 opposite numbers concerning margin?
25 A. I do believe there were discussions,

1 J. HUGHES
2 So if you want to ask him the facts
3 that he learned concerning the chronology of
4 the drafting process and if he remembers, or
5 the people he spoke to remember, you can
6 cover that.
7 Q. Who did you talk to about the drafting
8 history?
9 A. Again, representatives of Boies
10 Schiller, Cleary, and Sullivan & Cromwell.
11 Q. And who from Cleary?
12 A. People involved in that discussion
13 included Vic Lewkow, Bob Davis, Lindsee
14 Granfield, Ed Rosen. There is more. Boaz
15 Morag, B-O-A-Z, M-O-R-A-G. I think. Mike
16 Mazzuchi, and I can't spell Mazzuchi. Did I say
17 Duane McLaughlin? Duane McLaughlin.
18 I think there may have been more, but
19 I think that should cover it.
20 Q. It sounds pretty comprehensive.
21 Was the purpose of your discussing --
22 your discussions with them to at least in part
23 determine what discussions they had had in the
24 course of negotiating the clarification letter?
25 MR. STERN: I guess I am going to

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1 J. HUGHES
2 as I mentioned earlier, during the period 19th
3 to 22nd involving representatives of Cleary, the
4 trustee, the OCC, I believe representatives of
5 Lehman and LBHI -- sorry, Lehman, and possibly
6 the creditors committee were party to some of
7 those discussions.
8 And if I may, I would refer you back
9 to the earlier comments I made about the
10 transfer and assumption agreement and the many
11 communications among those people that I just
12 identified relating to margin and associated
13 issues.
14 MR. STERN: Bill, just so your Cleary
15 list is complete, I may not have heard this,
16 but I don't believe you listed Ed Rosen.
17 MR. MAGUIRE: I believe he did. But
18 we have certainly got him now.
19 MR. STERN: So it's complete.
20 Q. You referred to discussions concerning
21 the transfer and assumption agreement. Leaving
22 aside any discussions about the transfer and
23 assumption agreement, are you aware of any
24 discussions that Cleary had concerning the
25 subject of margin?

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<p>1 J. HUGHES</p> <p>2 MR. STERN: Objection.</p> <p>3 A. I'm hesitating because I'm not sure it</p> <p>4 is a good representation of the discussions that</p> <p>5 I have learned about, that if one leaves aside,</p> <p>6 like you just said, discussions about the</p> <p>7 transfer and assumption agreement, my belief is</p> <p>8 that representatives of Barclays and their</p> <p>9 opposite numbers, as you mentioned or described</p> <p>10 them, had discussions about collateral related</p> <p>11 to the exchange-traded derivatives business.</p> <p>12 Those discussions were relevant to the transfer</p> <p>13 and assumption agreement, but they were also</p> <p>14 relevant necessarily to the actual sale of the</p> <p>15 business of Lehman Brothers. So it is hard to</p> <p>16 divorce the two.</p> <p>17 On the one hand, I think the</p> <p>18 discussions are primarily about margin and</p> <p>19 establishing, again as I mentioned earlier, that</p> <p>20 all of the margin in whatever form had to be</p> <p>21 transferred to Barclays and had to be done</p> <p>22 quickly, and the OCC urgently wanted an</p> <p>23 agreement, wanted to conclude the agreement to</p> <p>24 that effect.</p> <p>25 And I think it is just somewhat</p>	<p>1 J. HUGHES</p> <p>2 unrealistic to break up the discussion and then</p> <p>3 apply it to a particular agreement at any</p> <p>4 particular point in time, other than of course</p> <p>5 to the actual final documentation of the terms.</p> <p>6 Q. And what are the discussions that</p> <p>7 Cleary had concerning margin, whether it was</p> <p>8 with respect to the transfer and assumption</p> <p>9 agreement or otherwise?</p> <p>10 A. In effect, as I described earlier,</p> <p>11 that the margin in whatever form, any property</p> <p>12 that was held in connection with the</p> <p>13 exchange-traded derivatives business, including</p> <p>14 the OCC margin, however described, was</p> <p>15 understood to be and should be transferred to</p> <p>16 Barclays in the sale in accordance with what</p> <p>17 was, I believe, not only the agreement of the</p> <p>18 parties but the expectation of all of the</p> <p>19 participants in the discussion that I had</p> <p>20 earlier identified.</p> <p>21 Q. And who at Cleary said that?</p> <p>22 A. I don't know whether there is one</p> <p>23 person. The principal negotiator of -- or the</p> <p>24 principal participant in those discussions from</p> <p>25 Barclays' perspective was Ed Rosen at Cleary</p>
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<p>1 J. HUGHES</p> <p>2 Gottlieb.</p> <p>3 Q. And with whom did Ed Rosen have those</p> <p>4 discussions?</p> <p>5 A. Representatives of the OCC, the</p> <p>6 trustee, representatives of Weil Gotshal, I</p> <p>7 believe. I'm less certain about the</p> <p>8 participation, though I believe they</p> <p>9 participated. Representatives of the estate,</p> <p>10 LBHI estate, and the creditors committee. I</p> <p>11 believe that they participated in, or if not</p> <p>12 participated, were made aware during the course</p> <p>13 of that time, of the substance of the</p> <p>14 discussions.</p> <p>15 Precise names of people acting on</p> <p>16 behalf of the trustee or the OCC, I couldn't now</p> <p>17 recall.</p> <p>18 Q. And what's the basis for your belief</p> <p>19 that Weil was party to those discussions with</p> <p>20 Cleary?</p> <p>21 A. I'm not certain, but I believe that</p> <p>22 those were the recollections of representatives</p> <p>23 of Cleary who participated. I believe, though</p> <p>24 again I wouldn't be certain, that the many</p> <p>25 communications that I again referred to earlier,</p>	<p>1 J. HUGHES</p> <p>2 a good proportion of which were by e-mail, may</p> <p>3 also have included representatives of Weil. I</p> <p>4 could be wrong about that, but that's my</p> <p>5 recollection.</p> <p>6 Q. When you say that's your recollection,</p> <p>7 do you recall a specific e-mail that went to</p> <p>8 Weil?</p> <p>9 A. I don't recall a specific one here and</p> <p>10 now. I was shown some e-mails that relate to</p> <p>11 these discussions that we are focusing on right</p> <p>12 now, and I thought that they included some</p> <p>13 e-mails which were sent to people at Weil, but</p> <p>14 again, I could be wrong.</p> <p>15 Q. And leaving aside e-mails, do you know</p> <p>16 one way or another whether Weil was party to the</p> <p>17 conversations with Mr. Rosen concerning margin?</p> <p>18 A. I believe so. I also believe that</p> <p>19 Harvey Miller and possibly other representatives</p> <p>20 of Weil understood each and every meaningful</p> <p>21 portion of the agreement. But also, understood</p> <p>22 at the time that all of the margin was included</p> <p>23 in the assets that had to be transferred to</p> <p>24 Barclays pursuant to the agreement.</p> <p>25 Q. And what's the basis for that belief?</p>

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<p>1 J. HUGHES</p> <p>2 A. The --</p> <p>3 MR. STERN: Let me just -- wait a</p> <p>4 second. I'm not sure -- I'm not sure what</p> <p>5 belief you're referring to in your question,</p> <p>6 because the answer referred to two different</p> <p>7 beliefs.</p> <p>8 Q. Well, we will take them one at a time.</p> <p>9 MR. STERN: One is a belief that</p> <p>10 Harvey Miller, et cetera --</p> <p>11 Q. Why don't we start with that one.</p> <p>12 With respect to Mr. Miller, what's the basis for</p> <p>13 your belief?</p> <p>14 A. Can I ask one question of Mr. Stern</p> <p>15 before I answer that question?</p> <p>16 Q. Go ahead.</p> <p>17 MR. STERN: Let's step out.</p> <p>18 MR. MAGUIRE: The witness is excused</p> <p>19 for a moment.</p> <p>20 (Recess)</p> <p>21 Q. Sir?</p> <p>22 A. Thank you. The belief that you asked</p> <p>23 me about comes from discussions that I had in</p> <p>24 reports of -- by the people I had discussions</p> <p>25 with, mostly Cleary, relating to negotiations</p>	<p>1 J. HUGHES</p> <p>2 relating to margin during that week, closing</p> <p>3 weekend.</p> <p>4 I have also, in preparation for today,</p> <p>5 reviewed some of the transcript of Harvey</p> <p>6 Miller's deposition from which I conclude that</p> <p>7 Mr. Miller was, among other things,</p> <p>8 knowledgeable about and fully understood all the</p> <p>9 meaningful terms of this transaction and I</p> <p>10 believe that he understood that the</p> <p>11 @@exchange-traded derivatives business and</p> <p>12 assets held in connection with it were</p> <p>13 transferred and should be transferred to</p> <p>14 Barclays.</p> <p>15 Q. When you referred to the Cleary</p> <p>16 people, who were you referring to?</p> <p>17 A. Certainly Ed Rosen, but also the</p> <p>18 recollections of the other Cleary individuals</p> <p>19 that I mentioned.</p> <p>20 I hesitate around that only because it</p> <p>21 is hard for me to pinpoint exactly who may have</p> <p>22 said something specific at a particular point in</p> <p>23 time given that a lot of the discussions I have</p> <p>24 had recently with Cleary Gottlieb have included</p> <p>25 a variety of issues and, therefore, there has</p>
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<p>1 J. HUGHES</p> <p>2 been present on a number of occasions many</p> <p>3 people from Cleary.</p> <p>4 Q. What did the Cleary people tell you</p> <p>5 about their communications concerning margin</p> <p>6 with Harvey Miller?</p> <p>7 WITNESS' ATTORNEY: @@Don't testify to</p> <p>8 what Cleary told you. You can testify what</p> <p>9 you learned, what facts you know concerning</p> <p>10 Cleary's communications with Harvey Miller</p> <p>11 on this subject.</p> <p>12 Did I simplify it or complicate it?</p> <p>13 THE WITNESS: You simplified it.</p> <p>14 A. I don't know any facts that are borne</p> <p>15 of Ed Rosen telling me that he spoke to Harvey</p> <p>16 Miller specifically and spoke to Harvey Miller</p> <p>17 specifically about this topic. So I'm not</p> <p>18 seeking to attribute specific words from those</p> <p>19 discussions either to Harry Miller or Ed Rose.</p> <p>20 Q. Let's leave those two individuals</p> <p>21 aside. What did Barclays -- what did Cleary</p> <p>22 communicate to Weil concerning margin?</p> <p>23 A. I believe that included in the many</p> <p>24 communications that I have again referred to a</p> <p>25 few times were the expectation and belief and</p>	<p>1 J. HUGHES</p> <p>2 understanding that all of the collateral, any</p> <p>3 form of collateral held in connection with that</p> <p>4 exchange-traded derivatives business was to be</p> <p>5 acquired by Barclays.</p> <p>6 It is hard in reviewing e-mails to</p> <p>7 recall exactly which was the first e-mail in a</p> <p>8 chain, but during the course of those</p> <p>9 communications and during the course of the</p> <p>10 discussions in the closing weekend, I believe it</p> <p>11 was clear, made clear by Cleary, among others,</p> <p>12 but certainly by Cleary to representatives of</p> <p>13 Weil that the collateral margin of whatever form</p> <p>14 was to be conveyed as I have described.</p> <p>15 Q. I will leave aside e-mails now and</p> <p>16 just ask you about specific verbal conversation.</p> <p>17 Is that OK?</p> <p>18 A. Sure.</p> <p>19 Q. And can you point me to any specific</p> <p>20 conversations that occurred between Cleary and</p> <p>21 Weil concerning margin?</p> <p>22 A. I think as I said before, there is</p> <p>23 clarity of recollection regarding the</p> <p>24 participation of the trustee or its -- or his</p> <p>25 representatives and the OCC.</p>

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<p>1 J. HUGHES</p> <p>2 There is less clarity about the</p> <p>3 actual participation of Weil in conversations</p> <p>4 during that closing weekend. It is my belief</p> <p>5 that they were party to such discussions, but as</p> <p>6 I think I acknowledged earlier, I can't -- I</p> <p>7 couldn't be certain about that. That being the</p> <p>8 case, I don't think I can recall for you today</p> <p>9 specific discussions between those parties that</p> <p>10 definitively included Weil. I think they were,</p> <p>11 as I said, again included in part or all of the</p> <p>12 relevant e-mail chain of communications.</p> <p>13 MR. MAGUIRE: We will mark as Exhibit</p> <p>14 562C document Bates stamped WGM-Lehman-E</p> <p>15 0006263 through 6270.</p> <p>16 (Exhibit 562C, document Bates stamped</p> <p>17 WGM-Lehman-E 0006263 through 6270 marked for</p> <p>18 identification, as of this date.)</p> <p>19 Q. Sir, I'm going to invite you please to</p> <p>20 turn to the page, three pages in, Bates stamped</p> <p>21 WGM-Lehman-E 00006265.</p> <p>22 A. Yup.</p> <p>23 Q. Are you with me?</p> <p>24 A. Yup.</p> <p>25 Q. If you would look, sir, at the bottom</p>	<p>1 J. HUGHES</p> <p>2 of the page, few lines, starts with, "Maintained</p> <p>3 by or on behalf of LBI," goes down to the</p> <p>4 bottom, it is highlighted and deleted. Do you</p> <p>5 see that?</p> <p>6 WITNESS' ATTORNEY: This I have to say</p> <p>7 is very hard to read.</p> <p>8 A. I was about to say. Your use of the</p> <p>9 term "highlighted" is perhaps not the best, but</p> <p>10 I see what you are referring to.</p> <p>11 Q. You can could read the text albeit</p> <p>12 with a little struggle.</p> <p>13 A. I can with a struggle.</p> <p>14 Q. By all means take as much time as you</p> <p>15 need to read it. My question is whether you can</p> <p>16 point me to any discussions that Cleary had with</p> <p>17 anyone concerning that deletion?</p> <p>18 WITNESS' ATTORNEY: So the question is</p> <p>19 whether Mr. Hughes recalls whether any of</p> <p>20 the Cleary people recall a discussion about</p> <p>21 that deletion?</p> <p>22 Q. No, the question is whether Barclays</p> <p>23 can point me to any discussions that Cleary had</p> <p>24 with anyone concerning that deletion.</p> <p>25 WITNESS' ATTORNEY: I don't know how</p>
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<p>1 J. HUGHES</p> <p>2 that's different from what I said, but if</p> <p>3 you can recall.</p> <p>4 A. I don't recall any discussions of the</p> <p>5 type you just described.</p> <p>6 Q. Sir, I will show you a document that</p> <p>7 previously has been marked as Exhibit 50. While</p> <p>8 we are getting that actually, let me just ask</p> <p>9 you a couple more questions about Cleary</p> <p>10 conversations.</p> <p>11 Can you point me to any specific</p> <p>12 discussions that anyone at Cleary had over the</p> <p>13 weekend of the clarification letter with anyone</p> <p>14 concerning guarantee fund?</p> <p>15 A. What do you mean by guarantee fund?</p> <p>16 Q. Using those words.</p> <p>17 A. I wouldn't know with that degree of</p> <p>18 particularity whether the discussions during</p> <p>19 that weekend included that phrase. I wouldn't</p> <p>20 know.</p> <p>21 Q. Would you know whether there were any</p> <p>22 discussions involving the term "clearing fund"?</p> <p>23 A. I wouldn't know whether there was a</p> <p>24 specific discussion that included that phrase.</p> <p>25 I -- yeah, I think I can limit it at that</p>	<p>1 J. HUGHES</p> <p>2 because I'm not sure of the specific term or</p> <p>3 not.</p> <p>4 WITNESS' ATTORNEY: Let me state for</p> <p>5 the record while Mr. Hughes is here as a</p> <p>6 30(b)(6) witness, there should be no</p> <p>7 implication from his lack of recollection</p> <p>8 that such conversations did not occur. The</p> <p>9 fact that Mr. Hughes may not recall does not</p> <p>10 mean necessarily that such conversations did</p> <p>11 not occur.</p> <p>12 MR. MAGUIRE: Well, Barclays can</p> <p>13 certainly reserve its rights in that regard,</p> <p>14 Jack.</p> <p>15 WITNESS' ATTORNEY: That's what I am</p> <p>16 doing, I am reserving my rights. I don't</p> <p>17 want there to be any implication as we sit</p> <p>18 here today and Mr. Hughes tries in good</p> <p>19 faith to answer your questions, that if he</p> <p>20 doesn't recall something, that that</p> <p>21 necessarily implies that the conversation</p> <p>22 didn't occur. So I am reserving my rights</p> <p>23 to make it clear on the record.</p> <p>24 MR. MAGUIRE: Well, reserving your</p> <p>25 rights --</p>

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<p>1 J. HUGHES</p> <p>2 WITNESS' ATTORNEY: I am more than</p> <p>3 reserving my rights, I am making it clear on</p> <p>4 the record.</p> <p>5 MR. MAGUIRE: Well, you understand</p> <p>6 that certainly there is no agreement to that</p> <p>7 effect on our side of the table. Everybody</p> <p>8 can reserve their rights, that's fine.</p> <p>9 WITNESS' ATTORNEY: Well, I don't</p> <p>10 think it is a matter of agreement. I think</p> <p>11 it is just a matter of basic common sense</p> <p>12 that if a witness is trying in good faith --</p> <p>13 MR. MAGUIRE: Sir --</p> <p>14 WITNESS' ATTORNEY: Let me finish my</p> <p>15 statement.</p> <p>16 If a witness is trying in good faith</p> <p>17 to answer questions and cannot recall, even</p> <p>18 if the witness is a 30(b)(6) witness, that</p> <p>19 that does not imply the complete absence of</p> <p>20 those events. And we have had 30(b)(6)</p> <p>21 witnesses for the moving parties who had no</p> <p>22 recollection of certain facts. So I just</p> <p>23 want to make that clear on the record.</p> <p>24 MR. MAGUIRE: That's fine, you can</p> <p>25 make your statement. We are not going to</p>	<p>1 J. HUGHES</p> <p>2 argue and we will continue with the</p> <p>3 deposition.</p> <p>4 A. Can I make a comment?</p> <p>5 Q. If you really want to.</p> <p>6 A. I do. You asked me a question about</p> <p>7 the use of specific terms is or specific</p> <p>8 phrases, I should say, and I answered your</p> <p>9 question literally in the sense that I have no</p> <p>10 recollection of the use of those specific terms</p> <p>11 or phrases.</p> <p>12 But I offer that without the benefit</p> <p>13 of what you mean by those terms.</p> <p>14 Q. Sir, let me show you what we have</p> <p>15 marked as Exhibit 25 which is the clarification</p> <p>16 letter?</p> <p>17 A. When you say the clarification letter,</p> <p>18 do you mean the one that was ultimately agreed</p> <p>19 between the parties and signed?</p> <p>20 Q. I believe so, you're familiar with</p> <p>21 that, right?</p> <p>22 A. Yes.</p> <p>23 Q. Sir, if you turn to the top of page 2,</p> <p>24 you will see that four lines down from the top,</p> <p>25 there is a parenthetical that says, "And any</p>
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<p>1 J. HUGHES</p> <p>2 property that may be held to secure obligations</p> <p>3 under such derivatives."</p> <p>4 Do you see that?</p> <p>5 A. I do.</p> <p>6 Q. And who proposed that language?</p> <p>7 A. I'm not sure I know who -- I don't</p> <p>8 think I know who first proposed that language.</p> <p>9 It's -- it could have come from a number of</p> <p>10 sources.</p> <p>11 Q. Do you know when that language was</p> <p>12 proposed?</p> <p>13 A. Apart from obviously at some point</p> <p>14 during the course of that weekend, the closing,</p> <p>15 I don't know exactly when it was first proposed</p> <p>16 or by whom. It could have been proposed by the</p> <p>17 OCC, could have been proposed by Weil. It could</p> <p>18 have been proposed by a number of people.</p> <p>19 Q. Can you tell me whether this was</p> <p>20 originally featured in any red line draft or</p> <p>21 markup of the clarification letter?</p> <p>22 A. I don't know the answer to that</p> <p>23 question.</p> <p>24 Q. Can you point me to any discussions by</p> <p>25 anyone representing Cleary concerning the</p>	<p>1 J. HUGHES</p> <p>2 addition of this parenthetical?</p> <p>3 A. When you say point you to discussions,</p> <p>4 I'm not sure I understand.</p> <p>5 Q. Can you tell me what discussions</p> <p>6 Barclays or any of its representatives had about</p> <p>7 the addition of this parenthetical to the</p> <p>8 clarification letter?</p> <p>9 A. I believe that the best recollections</p> <p>10 of people at Cleary that I have spoken to are</p> <p>11 that the language was included in the final</p> <p>12 clarification letter partly as a reflection of</p> <p>13 the discussions that had happened during the</p> <p>14 course of the weekend, again, which I referred</p> <p>15 to on several occasions, relating to assets held</p> <p>16 in connection with the exchange-traded</p> <p>17 derivatives business and I believe that it</p> <p>18 appears here in the final letter, agreed letter,</p> <p>19 following those discussions.</p> <p>20 Whether it appeared or was proposed</p> <p>21 prior to that, whether the language had been</p> <p>22 discussed prior to that or by whom it may have</p> <p>23 been initially proposed and when, I can't tell</p> <p>24 you.</p> <p>25 Q. Do you know whether anyone at Cleary</p>

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had any discussion with anyone about adding this parenthetical to the clarification letter?

A. I don't know specifically whether there were discussions about adding the parenthetical as as you describe.

I do know that it was Barclays' understanding at the time that this document was signed, was reviewed and signed, that there was no part of what had been agreed in Barclays' mind that was different from the APA or the negotiated terms with Lehman Brothers regarding exchange-traded derivatives.

I believe that Barclays intended for this part of the agreement to accurately describe the arrangements that had also been discussed with the trustee and with the OCC.

WITNESS' ATTORNEY: Shall we take a short break?

MR. MAGUIRE: Yes, that's fine.

(Recess)

Q. Before the break, we were talking about a parenthetical on page 2 of the clarification agreement. You are with me?

A. Yes.

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I specifically the numbers and values to be associated with particular assets, be they cash or securities. There may also be representatives of Barclays in the operations function that might know.

Q. Can you tell me what cash and securities Barclays believes it remains entitled to receive pursuant to the parenthetical we have been talking about?

A. Again, the exact numbers, I can't give you. I think there is, however, with that proviso, some north of 900 million. I think it is roughly 925 million, last time I saw, that's due from I believe assets held at the OCC. I think strictly they are held by JP Morgan, but they relate to the OCC.

Q. Did -- sorry.

A. There may be additional margin or collateral held at other futures exchanges or other clearing houses. I don't think we have been able to finally establish, despite many attempts to do so with the trustee, what the exact numbers are. So -- but I do believe that the single largest portion is that 920-odd

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Q. What cash and securities has Barclays received to date pursuant that parenthetical?

A. I'm not sure of the actual numbers to date. I think there was -- I believe there is an amount of slightly more than -- I think it is a billion, but I'm not sure that it was cash or Treasuries. I think it may have been Treasuries, and a smaller amount of securities, I believe in the -- either in the range of 20-odd million or 40-odd million. I can't remember the precise number of securities other than Treasuries.

Whether any specific cash in the form of hard currencies had been received, I don't know the answer to that. I think not yet. But I'm not certain.

Q. Do you know whether Barclays has received 1.375 billion dollars in cash at the OCC?

A. I'm feeling like I should know the answer to that question but I don't.

Q. Let me ask you, would Mr. Romain be maybe the better person to ask that question?

A. Mr. Romain would know much better than

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million number that I just gave to you.

Q. And when you say other exchanges, does that include foreign exchanges?

A. Absolutely. It includes any exchange and includes any transaction or any position or any collateral or any property associated with it that was part of the Lehman Brothers exchange-traded derivatives business.

Q. And does it also include the Chicago Mercantile Exchange?

WITNESS' ATTORNEY: Objection to the form of the question. "And does it also include the Chicago Mercantile Exchange?"

All right, go ahead and answer if you can.

A. By that did you mean does it include assets which are held by the CME?

Q. Yes.

A. I'm not sure whether strictly -- well, first of all, whether strictly that would be the right way to refer to it. I'm not sure whether the relevant assets would be held by the CME as the exchange or whether it would be the clearing -- the relevant clearing corporation, assuming you're not making any distinction

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<p>1 J. HUGHES</p> <p>2 between the two.</p> <p>3 I don't -- I'm not aware of assets</p> <p>4 that are still outstanding and held there. I am</p> <p>5 aware that prior to the 19th, the CME did close</p> <p>6 out a substantial amount of positions that were</p> <p>7 then held by Lehman Brothers.</p> <p>8 So to the extent any assets were held</p> <p>9 with respect to those positions, I wouldn't</p> <p>10 expect that we would be awaiting those. But I</p> <p>11 couldn't tell you definitively whether either</p> <p>12 the CME or another particular exchange is not</p> <p>13 holding assets that may come within the assets</p> <p>14 to be transferred under the sale agreement.</p> <p>15 Q. Did Barclays obtain any assets that</p> <p>16 Lehman held at the CME?</p> <p>17 WITNESS' ATTORNEY: Objection to the</p> <p>18 form.</p> <p>19 A. Not that I am aware of.</p> <p>20 Q. Did Barclays undertake any credit</p> <p>21 analysis prior to entering into the transfer and</p> <p>22 assumption agreement?</p> <p>23 A. What do you mean by credit analysis?</p> <p>24 Q. The term is used in the transfer and</p> <p>25 assumption agreement. We can show it to you if</p>	<p>1 J. HUGHES</p> <p>2 that helps.</p> <p>3 A. Yeah, please.</p> <p>4 Q. I show you what has previously been</p> <p>5 marked as Exhibit 51. And if you turn, sir, to</p> <p>6 page 2, if you look at 2C, section 2C, and</p> <p>7 within that to (i), "Barclays represents and</p> <p>8 warrants that it has received such documents and</p> <p>9 other information as it has deemed appropriate</p> <p>10 to make its own credit analysis."</p> <p>11 Do you see that?</p> <p>12 A. Yup.</p> <p>13 Q. What credit analysis did Barclays</p> <p>14 perform?</p> <p>15 A. I don't know, but I think the</p> <p>16 representation or warranty is that not that --</p> <p>17 well, I'm not going to -- I'm not aware of one</p> <p>18 way or another whether any credit analysis was</p> <p>19 conducted prior to the signature of this</p> <p>20 agreement.</p> <p>21 Q. Can you tell me what documents and</p> <p>22 other information --</p> <p>23 A. Could I interrupt you briefly.</p> <p>24 Q. Of course.</p> <p>25 A. I would like to ask one quick</p>
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<p>1 J. HUGHES</p> <p>2 question. I don't need to go out.</p> <p>3 MR. MAGUIRE: Fine.</p> <p>4 (Discussion held off the record)</p> <p>5 MR. MAGUIRE: The record will reflect</p> <p>6 the witness is consulting with his counsel.</p> <p>7 A. Thanks.</p> <p>8 Q. Can you tell me, sir, first, do you</p> <p>9 want to change any prior answer?</p> <p>10 A. No, thanks.</p> <p>11 Q. Can you tell me what documents and</p> <p>12 information Barclays obtained prior to making</p> <p>13 the decision to enter into the TAA?</p> <p>14 A. Do you mean what documents Barclays</p> <p>15 received with respect to the TAA? Or do you</p> <p>16 mean any type of document before entering into</p> <p>17 the TAA?</p> <p>18 Q. I guess I'm looking for whatever</p> <p>19 documents informed Barclays' decision to enter</p> <p>20 into that agreement. Can you tell me what were</p> <p>21 the universe of documents that Barclays</p> <p>22 considered in making that decision?</p> <p>23 A. I'm not sure I could describe</p> <p>24 necessarily every document that may have been</p> <p>25 relevant, but I would say that they included the</p>	<p>1 J. HUGHES</p> <p>2 APA, they included all of the e-mail</p> <p>3 communications relating to the TAA that I have</p> <p>4 described.</p> <p>5 It's possible that there was a prior</p> <p>6 agreement or a draft of a prior agreement</p> <p>7 between the OCC and the trustee and there may</p> <p>8 have been -- and I believe there were additional</p> <p>9 communications between the OCC and the trustee</p> <p>10 that Barclays had sight of or was aware of that</p> <p>11 also may have informed the decision.</p> <p>12 That last category of additional</p> <p>13 documents may not, in fact, have been</p> <p>14 additional. It's possible they were included in</p> <p>15 my early description of the e-mail chain among</p> <p>16 Barclays, the OCC, the trustee, copy to Weil and</p> <p>17 so forth. It's possible there were additional</p> <p>18 ones. It's possible there were additional</p> <p>19 discussions between Ed Rosen with respect to</p> <p>20 this particular document, between Ed Rosen and</p> <p>21 the OCC and the trustee. They may also have</p> <p>22 been part of what I earlier described as the</p> <p>23 communications during the course of a weekend.</p> <p>24 So that if they weren't included in the earlier</p> <p>25 description of the communication flow during the</p>

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<p>1 J. HUGHES</p> <p>2 course of that weekend, then I would include</p> <p>3 them here.</p> <p>4 Whether that's the entirety of the</p> <p>5 documentation flow, I couldn't be certain. But</p> <p>6 I would have thought it includes at least those</p> <p>7 items that I referred to.</p> <p>8 Q. Did Barclays, over the weekend with</p> <p>9 the clarification letter, understand or have</p> <p>10 information concerning the amount of collateral</p> <p>11 that Lehman's customers had posted with Lehman</p> <p>12 to secure their derivatives positions?</p> <p>13 A. I've -- I don't think Barclays had any</p> <p>14 information as to the specifics of customer</p> <p>15 positions of the type you described. It's</p> <p>16 possible that there had been some information</p> <p>17 passed between respective representatives of</p> <p>18 Lehman and Barclays who were connected with the</p> <p>19 futures and options businesses. But I don't</p> <p>20 think that they were a portion of the</p> <p>21 negotiations that I referred to and I'm not</p> <p>22 aware that there was ever any information</p> <p>23 available regarding the customer positions and I</p> <p>24 think probably there was not, but I could be</p> <p>25 wrong about it.</p>	<p>1 J. HUGHES</p> <p>2 Q. I'm not going to ask you any questions</p> <p>3 about customer positions. I'm going to ask you</p> <p>4 about the collateral that Lehman held for</p> <p>5 customers to secure their positions. So</p> <p>6 specifically I'm asking you about the money</p> <p>7 market funds and the other collateral that</p> <p>8 customers had posted with Lehman. Do you</p> <p>9 understand what I am talking about?</p> <p>10 A. Well -- no, I'm not sure I do</p> <p>11 understand what you are talking about actually.</p> <p>12 Q. Let me show you a document that has</p> <p>13 previously been marked as Exhibit 404A. You</p> <p>14 will see that this -- this contains some</p> <p>15 handwriting from your colleague and Mr. Romain.</p> <p>16 Basically, this says, lists the money market</p> <p>17 funds and other assets and you will see there is</p> <p>18 a little addition, Mr. Romain, on the left-hand</p> <p>19 side, where he calculates the collateral and the</p> <p>20 number he has here is 2.192 billion dollars.</p> <p>21 A. It actually says 2,192 dollars.</p> <p>22 Q. I'll represent to you that he has</p> <p>23 testified that's thousands of millions, whatever</p> <p>24 it is to get it to 2.192 billion.</p> <p>25 A. OK.</p>
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<p>1 J. HUGHES</p> <p>2 Q. Did Barclays have this information</p> <p>3 prior to closing?</p> <p>4 A. I have no idea. I have never seen the</p> <p>5 document before and I haven't spoken to Gary</p> <p>6 Romain about it either.</p> <p>7 Q. Did Barclays know the total amount of</p> <p>8 collateral that Lehman's customers had posted in</p> <p>9 respect of their derivatives positions?</p> <p>10 WITNESS' ATTORNEY: Where are we in</p> <p>11 the 30(b)(6) topics here?</p> <p>12 MR. MAGUIRE: I think we are still on</p> <p>13 20.</p> <p>14 WITNESS' ATTORNEY: We are on 20.</p> <p>15 Q. Do you know, sir?</p> <p>16 WITNESS' ATTORNEY: I don't think that</p> <p>17 really is covered by 20, but I'll let you</p> <p>18 answer it to the best of your ability.</p> <p>19 A. I couldn't be certain, but I don't</p> <p>20 think, I don't think so. But I couldn't be</p> <p>21 certain.</p> <p>22 Q. Have you done any investigation prior</p> <p>23 to this deposition to determine whether or not</p> <p>24 Barclays knew the amount of collateral that</p> <p>25 Lehman held for customers of the derivatives</p>	<p>1 J. HUGHES</p> <p>2 business?</p> <p>3 WITNESS' ATTORNEY: I am going to</p> <p>4 object. I don't think that's within the</p> <p>5 scope of this deposition.</p> <p>6 You can answer.</p> <p>7 A. I have not spoken to anybody at</p> <p>8 Barclays about customer collateral held by</p> <p>9 Lehman Brothers in order to answer questions at</p> <p>10 this deposition.</p> <p>11 Q. Are you aware of any information that</p> <p>12 Barclays had when it made the decision to enter</p> <p>13 into the transfer and assumption agreement other</p> <p>14 than what you have told us?</p> <p>15 A. I am sorry, repeat that.</p> <p>16 Q. We have been talking about information</p> <p>17 that Barclays had prior to making the decision</p> <p>18 to enter into the transfer and assumption</p> <p>19 agreement. And you have listed a number of</p> <p>20 documents. Are you aware of any other documents</p> <p>21 or other information that you haven't told us?</p> <p>22 A. I'm not aware of other documents, but</p> <p>23 I think there is other information that I've</p> <p>24 alluded -- that I have referred to earlier in</p> <p>25 our discussions, meaning earlier in the</p>

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<p>1 J. HUGHES</p> <p>2 deposition. And I'd summarize that as</p> <p>3 information that people at Barclays had relating</p> <p>4 to the conduct of futures and options business.</p> <p>5 And by options, I mean the exchange-traded</p> <p>6 options business and the detailed knowledge that</p> <p>7 Barclays had about the conduct of such business,</p> <p>8 inclusive of the manner in which collateral is</p> <p>9 held to support that business and including the</p> <p>10 different forms of collateral that are used in</p> <p>11 that business.</p> <p>12 All of that and indeed additional</p> <p>13 information with respect to those businesses and</p> <p>14 how that they are conducted, which would be way</p> <p>15 too detailed to go into now, although I can if</p> <p>16 you wish, all of that knowledge clearly informed</p> <p>17 Barclays' assessments about whether it was a</p> <p>18 good thing, A, to acquire the exchange-traded</p> <p>19 businesses that we have described, inclusive of</p> <p>20 assets and liabilities, and also whether it was</p> <p>21 appropriate to reach the agreements that we did</p> <p>22 reach with the OCC and the trustee.</p> <p>23 So that description doesn't refer to</p> <p>24 documentation, but I think it is important</p> <p>25 knowledge that Barclays had. I believe also</p>	<p>1 J. HUGHES</p> <p>2 Lehman had it, or representatives of Lehman had</p> <p>3 it, at the time too. So I think that is all</p> <p>4 important to understand in assessing the</p> <p>5 judgments that Barclays has made at the time.</p> <p>6 Q. When you say the information that</p> <p>7 Barclays had concerning the businesses and how</p> <p>8 they were conducted, are you including in that</p> <p>9 the OCC's requirement that all derivatives</p> <p>10 positions be covered by collateral?</p> <p>11 A. Yes. And I should just say that I'm</p> <p>12 not referring to Lehman's businesses in that</p> <p>13 description. I'm referring to the futures and</p> <p>14 options industry so to speak, and the manner in</p> <p>15 which exchange-traded businesses is conducted</p> <p>16 inclusive of the use of clearing houses and the</p> <p>17 OCC.</p> <p>18 Q. I understand. And specifically with</p> <p>19 respect to the OCC, did you understand, Barclays</p> <p>20 understood that it marked to market positions on</p> <p>21 at least a daily basis?</p> <p>22 A. It would have been the understanding</p> <p>23 that the OCC and other clearing corporations</p> <p>24 would mark margin and would value margin and</p> <p>25 related positions throughout the business day.</p>
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<p>1 J. HUGHES</p> <p>2 Q. And where a position, where a member</p> <p>3 fails to post the required margin, the OCC</p> <p>4 liquidates the position?</p> <p>5 A. Sometimes, yes, it has the right to do</p> <p>6 that.</p> <p>7 Q. Who made the decision to enter into</p> <p>8 the transfer and assumption agreement?</p> <p>9 A. I think ultimately Gerard Larocca was</p> <p>10 the signatory of it.</p> <p>11 Q. Was he the decision maker?</p> <p>12 A. I think the decision was made in a</p> <p>13 combination or through a combination of myself,</p> <p>14 Gerard Larocca and Rich Ricci.</p> <p>15 Q. And who was the ultimate decision</p> <p>16 maker?</p> <p>17 A. The ultimate decision maker? I'm not</p> <p>18 sure I -- I'm not sure what you mean by the</p> <p>19 ultimate decision maker.</p> <p>20 I think that tracing the delegation</p> <p>21 and -- of authorities from a corporate</p> <p>22 perspective factually, I believe I may have been</p> <p>23 specifically an authorized signatory. But I</p> <p>24 think ultimately Gerard Larocca was definitively</p> <p>25 an authorized signatory of the signing entity.</p>	<p>1 J. HUGHES</p> <p>2 So I believe he -- I believe that he -- that</p> <p>3 Gerard Larocca would be the answer to your</p> <p>4 question.</p> <p>5 Ultimately because it was connected</p> <p>6 with the negotiation of the transactions, I</p> <p>7 guess ultimately was, by extension, approved by</p> <p>8 the Barclays board. Though nobody, as I recall,</p> <p>9 actually picked up the phone to a member of the</p> <p>10 board to say is it OK if I sign this document</p> <p>11 right now.</p> <p>12 Q. When was the decision made to enter</p> <p>13 into the TAA?</p> <p>14 A. I think it was in the early hours of</p> <p>15 Monday morning, but I could be wrong about that.</p> <p>16 Q. Sir, let's switch gears. I would like</p> <p>17 to ask you some questions about the clearance</p> <p>18 box assets.</p> <p>19 A. Sure.</p> <p>20 Q. Those are assets specifically at DTC,</p> <p>21 Deposit Trust Corporation. Can I ask you first</p> <p>22 why Barclays did not enter into an agreement</p> <p>23 with the DTC similar to the agreement that it</p> <p>24 entered into with the OCC?</p> <p>25 A. Well --</p>

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WITNESS' ATTORNEY: Does this call for privileged information?

A. I was going to ask a question first.

Are you asking me about the clearance box assets or are you asking me the DTC?

Q. Specifically about the arrangements that Barclays entered into with the OCC compared with the arrangements that it entered into with the DTC.

I mean to put it -- all I'm trying to find out is, I understand that Barclays agreed to be responsible for the settlement obligations of Lehman with respect to the OCC. And that Barclays declined to take on that same obligation with respect to the DTC.

WITNESS' ATTORNEY: So I think this is where the confusion comes in. You have a topic here, "Barclays decision not to the assume LBI's liabilities at DTC," et cetera, and you ask for discussions with LBI, et cetera. We think those would be the appropriate questions to ask. So -- I don't know if there is a pending question, but -- is there a pending question? I don't know

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made from the DTC clearance box to Barclays on September 18 and September 19 of 2008. Can you tell me what was the reason that those transfers occurred?

A. I'm not sure I know exactly what you're referring to there by clearance boxes or which assets you are referring to.

Q. I believe that you wrote to the trustee concerning certain transfers that had occurred on Friday, September 19 from DTC. Do you recall that?

A. On the 19th?

Q. That's the Friday of the sale hearing.

A. Earlier you mentioned the 18th and the 19th. You are referring just to the 19th.

Q. I am going to start with the 19th and see if we can get there. Do you know why those assets were transferred?

A. Can I be clear which assets you are referring to, either by reading the list you are referring to or perhaps by you describing what exactly you are referring to?

Q. Yeah, I believe in the letter you say Barclays identifies the following transfers of

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if there is, is there a pending question.

Q. Let me put it, why did Barclays not agree to be responsible for the Lehman settlement obligations to DTC?

WITNESS' ATTORNEY: You can answer, but don't reveal any privileged communications, if you can answer it without revealing privileged communications.

A. I think that the determinations with respect to OCC obligations on the one hand and the determination with respect to DTC settlement obligations on another were never associated at any point in time.

The determination with respect to DTC obligations at the time was that Barclays had never contemplated taking on that category of liabilities of Lehman Brothers. Lehman Brothers never asked Barclays, as far as I'm aware, to take on those liabilities. Barclays did have discussions with DTC about them. But at no point, as far as I'm aware, did Barclays indicate to DTC that it would take on those obligations.

Q. I understand that some transfers were

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clearance box securities and the first one you mention is 1.035 billion dollars from DTCC on September 19.

A. Um-hm.

Q. Why was that transfer made?

A. I believe it was part of an exercise pursuant to which or "part of" is the wrong word.

I believe the securities were transferred by either Jim Hraska, who was then an employee of Lehman Brothers or one of his colleagues, I think Jim Hraska, who I believe at the time thought that he was transferring those securities as part of a repo transaction, but that he was mistaken about that.

There had been, at or about the same time if not before that transfer -- I believe it may have been before -- an agreement reached between representatives of Lehman Brothers and Barclays that identified the clearance box assets as being a category of assets transferrable under the -- pursuant to the sale.

So I think that's -- I believe that's how it happened.

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<p>1 J. HUGHES</p> <p>2 Q. And I take it that all of the assets</p> <p>3 that were transferred to Barclays that came from</p> <p>4 the clearance box, Barclays is claiming them</p> <p>5 under the clarification letter as clearance box</p> <p>6 assets and not as a part of the repo?</p> <p>7 WITNESS' ATTORNEY: Objection to the</p> <p>8 form.</p> <p>9 A. Well, I think first and foremost, any</p> <p>10 assets we claim not pursuant to the</p> <p>11 clarification letter, we claim the assets</p> <p>12 pursuant to the asset purchase agreement as</p> <p>13 clarified by the clarification letter, strictly.</p> <p>14 Do we believe -- did we believe then</p> <p>15 and do we believe now that some of the assets</p> <p>16 were identified as clearance box assets and some</p> <p>17 were identified as repo assets? Yes. There</p> <p>18 were attempts, good faith attempts between both</p> <p>19 Barclays and Lehman's to identify each of those</p> <p>20 categories of assets. I believe the assets that</p> <p>21 you referred to that I had earlier referred to</p> <p>22 in my letter were transferred from what were</p> <p>23 termed the clearance boxes.</p> <p>24 And so the identified category of</p> <p>25 clearance box assets represented by Lehman</p>	<p>1 J. HUGHES</p> <p>2 Brothers, I think on the Friday morning as</p> <p>3 transferrable included the 1.035 billion.</p> <p>4 Whether any of the -- I can't now recall exactly</p> <p>5 which accounts the repo assets were transferred</p> <p>6 from and whether they were, in fact, separate</p> <p>7 accounts or whether some of the assets under the</p> <p>8 repo may have also come from the clearance</p> <p>9 boxes.</p> <p>10 I can't recall now specifically</p> <p>11 whether the actual accounts from which the</p> <p>12 transfers took place were at all times exclusive</p> <p>13 or different if one looks at one category of</p> <p>14 assets as compared to the other.</p> <p>15 Q. Yeah, my question is simply the</p> <p>16 billion dollars of assets that were transferred</p> <p>17 on the Friday the 19th. I just want to</p> <p>18 understand, Barclays is claiming that it is</p> <p>19 entitled to those assets under the sale</p> <p>20 agreement.</p> <p>21 A. Correct.</p> <p>22 Q. Does Barclays have any other</p> <p>23 entitlement to those assets other than under the</p> <p>24 sale agreement?</p> <p>25 WITNESS' ATTORNEY: Objection,</p>
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<p>1 J. HUGHES</p> <p>2 objection to the form.</p> <p>3 A. Other than under the sale agreement?</p> <p>4 WITNESS' ATTORNEY: You can answer if</p> <p>5 you understand the question.</p> <p>6 A. If by your question you mean was</p> <p>7 Barclays entitled to receive those assets from</p> <p>8 the clearance boxes pursuant to the terms --</p> <p>9 pursuant to the asset purchase agreement, yes, I</p> <p>10 believe Barclays was so entitled.</p> <p>11 The parties had agreed on the Friday</p> <p>12 morning that unencumbered assets that were</p> <p>13 then -- that Lehman Brothers was at that point</p> <p>14 able to identify and termed the clearance box</p> <p>15 assets were clearly assets owned in the business</p> <p>16 and therefore, they were due to Barclays.</p> <p>17 Q. The basis for Barclays claim to those</p> <p>18 assets is the APA?</p> <p>19 A. The APA --</p> <p>20 Q. As clarified?</p> <p>21 A. As clarified, yes.</p> <p>22 Q. We have been talking about the DTC</p> <p>23 clearance box. Is it Barclays' understanding</p> <p>24 that it is entitled to securities and other</p> <p>25 assets from depositories and clearance boxes</p>	<p>1 J. HUGHES</p> <p>2 other than those at DTC?</p> <p>3 A. I think if there are other assets that</p> <p>4 were used in connection with the businesses of</p> <p>5 Lehman Brothers in North America, that were --</p> <p>6 that are unencumbered, in the sense used to</p> <p>7 describe the clearance boxes, whether they are</p> <p>8 at DTC or anywhere else, they would be due to</p> <p>9 Barclays.</p> <p>10 Q. And that includes EuroClear?</p> <p>11 A. If such assets fit the description</p> <p>12 I've just given, yes.</p> <p>13 Q. Do you know whether Barclays has, in</p> <p>14 fact, obtained securities or other assets from</p> <p>15 EuroClear?</p> <p>16 A. I don't know the answer to that</p> <p>17 question.</p> <p>18 Q. Do you know whether Barclays has</p> <p>19 obtained securities or other assets from</p> <p>20 clearance boxes in other -- from other clearance</p> <p>21 boxes other than EuroClear and DTC?</p> <p>22 A. I'm not aware that that's happened,</p> <p>23 no. I'm not saying it hasn't, but I'm not aware</p> <p>24 that it has. And to be clear, I'm not aware</p> <p>25 that it has with respect to EuroClear. It may</p>

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2 have, but I don't know.
3 Q. What did you understand was Lehman's
4 exposure to DTC?
5 A. When you say exposure, what do you
6 mean?
7 Q. Risk of loss?
8 A. To DTC?
9 Q. Maybe I should -- maybe it is easier
10 the other way around. What was DTC's exposure
11 to Lehman?
12 A. I don't know.
13 Q. Did Barclays make any effort to
14 determine, quantify what was DTC's exposure to
15 Lehman?
16 A. No. I think it would be more accurate
17 to say that DT -- that Barclays urged DTC to
18 make a realistic determination of what that
19 exposure would be. There were initial requests
20 from DTC to Barclays to cover the -- cover
21 Lehman liabilities associated with transactions
22 that are cleared through DTC, and during those
23 discussions, Barclays urged -- well, first of
24 all, rejected those requests. Secondly,
25 encouraged DTC to make a proper assessment of

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2 believe that Barclays was very concerned that if
3 transactions that are clearable through -- that
4 were clearable through DTC were not able to
5 clear on -- when markets opened after the
6 closing, that that would be hugely problematic
7 for the -- for not just Lehman but also for
8 Barclays.
9 Q. Did --
10 A. And therefore, it was potentially --
11 it was potentially -- it would potentially stand
12 in the way of Barclays being able to conclude
13 the transaction.
14 Q. Did Barclays consider whether it could
15 conclude the transaction if DTC refused to act
16 for Lehman?
17 A. I don't know whether there was that
18 specific consideration. I do know that there
19 were discussions relating to the -- to the risks
20 associated with DTC blocking transactions that
21 needed to clear. That discussion was not just a
22 DTC discussion, but it also related to other
23 custodians and other organizations or
24 institutions that cleared Lehman-related
25 business. It was important for the flow of

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2 the nature and extent of those exposures and
3 instead of pleading or claiming a need for an
4 open-ended guarantee or indemnity, to use its
5 own records to be able to estimate more
6 realistically what that potential exposure could
7 be.
8 And ultimately DTC, I believe, did
9 conduct such an exercise. I wasn't party to
10 such an exercise, nor am I aware that anybody at
11 Barclays specifically was a party to the
12 exercise. But DTC did ultimately return to the
13 discussion and DTC and Barclays ultimately
14 agreed that Barclays would provide the sum of
15 250 million dollars as a -- I think it was 250
16 million dollars as a limited recourse indemnity,
17 so to speak, for potential losses that DTC might
18 face if -- or after the markets open for
19 business on the morning of the 22nd of
20 September.
21 Q. Did Barclays assess the impact on the
22 business it was acquiring if DTC were to issue a
23 cease to act notice with respect to Lehman?
24 A. I'm not sure that Barclays made an
25 assessment of the type as you describe it. I do

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2 those settlements to be allowed to happen in
3 order that securities transactions could
4 properly clear and assets and liabilities flow
5 accordingly.
6 Q. Was there any discussion among the
7 principals at Barclays as to whether it could
8 close the deal without DTC support?
9 A. When you say DTC support, I don't
10 think there was any discussion about DTC
11 support.
12 Q. But that I simply mean without DTC
13 continuing to act for Lehman?
14 WITNESS' ATTORNEY: You can answer if
15 you can answer without revealing privileged
16 communications.
17 A. I don't think -- I'm not aware of
18 discussions that would be -- discussions other
19 than privileged discussions on that topic.
20 Q. Did Barclays have any discussions with
21 any regulators concerning the need for DTC to
22 continue to act for Lehman?
23 A. I think there may have been
24 discussions between external legal advisors of
25 Barclays and certain regulators on that topic,

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<p>1 J. HUGHES</p> <p>2 but I don't know the content of those</p> <p>3 discussions.</p> <p>4 Q. Who was involved in those discussions?</p> <p>5 A. I can only answer that by saying that</p> <p>6 I am aware that Ed Rosen from Cleary Gottlieb</p> <p>7 had some discussions with some regulators and I</p> <p>8 believe that Roger Cohen and Jay Clayton at</p> <p>9 Sullivan & Cromwell had discussions with some</p> <p>10 regulators. Whether those discussions included</p> <p>11 reference to this topic, I don't know.</p> <p>12 I should add there were other</p> <p>13 discussions with regulators involving other</p> <p>14 people, but again, I'm not aware that they</p> <p>15 involved this topic.</p> <p>16 Can I be clear, I assume you do not</p> <p>17 include the DTC in the definition of a</p> <p>18 regulator.</p> <p>19 Q. That's right. All I am looking for is</p> <p>20 what communications were made by Barclays to</p> <p>21 regulators concerning the need for the DTC to</p> <p>22 continue to act for Lehman. Are there any</p> <p>23 communications that you are aware of?</p> <p>24 WITNESS' ATTORNEY: Other than what</p> <p>25 you already answered?</p>	<p>1 J. HUGHES</p> <p>2 A. I don't think I can say anything more</p> <p>3 than what I have already said on the topic. But</p> <p>4 I would repeat that DTC was not acting for</p> <p>5 Lehman Brothers.</p> <p>6 Q. By acting for Lehman Brothers, I</p> <p>7 simply mean clearing, continue to clear Lehman</p> <p>8 trades?</p> <p>9 A. Yes.</p> <p>10 Q. You understood that --</p> <p>11 A. That I understand, yeah.</p> <p>12 Q. I show you a document previously</p> <p>13 marked Exhibit 156B.</p> <p>14 WITNESS' ATTORNEY: This is a lending</p> <p>15 letter before --</p> <p>16 Q. To make it easier to you, sir --</p> <p>17 WITNESS' ATTORNEY: You are going to</p> <p>18 point --</p> <p>19 Q. Just going to point to the second</p> <p>20 page, first full paragraph, "It should be quite</p> <p>21 clear in context, however"?</p> <p>22 A. Yup.</p> <p>23 WITNESS' ATTORNEY: Why don't you read</p> <p>24 that paragraph and read whatever else you</p> <p>25 think you need to to put it in context.</p>
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<p>1 J. HUGHES</p> <p>2 Q. Just let me know, sir, when you have</p> <p>3 done that.</p> <p>4 A. OK, I've read it.</p> <p>5 Q. I want to invite your attention, sir,</p> <p>6 specifically with respect to the distinction</p> <p>7 that is being drawn here between certain</p> <p>8 accounts maintained at DTCC and the securities</p> <p>9 contained in those accounts. Do you see that?</p> <p>10 A. I do.</p> <p>11 Q. Can you tell me what is the basis for</p> <p>12 that distinction?</p> <p>13 WITNESS' ATTORNEY: If you can answer</p> <p>14 that without revealing privileged</p> <p>15 information, you can answer. If you are</p> <p>16 concerned you would reveal privileged</p> <p>17 information, let me know.</p> <p>18 A. I believe the basis is that the</p> <p>19 agreement between Lehman Brothers and Barclays</p> <p>20 referred to, in this context, particular</p> <p>21 securities that had been identified by Lehman</p> <p>22 Brothers initially in a -- it had been a large</p> <p>23 list or lengthy list of securities. And that</p> <p>24 was the agreement between the parties with</p> <p>25 respect to that identified class of securities</p>	<p>1 J. HUGHES</p> <p>2 which were assets held in connection with</p> <p>3 Lehman's businesses which I said, as I have</p> <p>4 said, was the core of the transaction.</p> <p>5 I believe the basis also is that at no</p> <p>6 point did Barclays ever agree in this context</p> <p>7 with Lehman Brothers to acquire liabilities in</p> <p>8 any accounts of Lehman Brothers at DTC, and</p> <p>9 further, I think the basis is that this</p> <p>10 paragraph is in part at least a reference to the</p> <p>11 nature of the agreement between Barclays and DTC</p> <p>12 as distinct from the nature of the agreement</p> <p>13 between Barclays and Lehman Brothers.</p> <p>14 Q. Was this distinction ever discussed</p> <p>15 with anyone at DTC?</p> <p>16 A. Which distinction?</p> <p>17 Q. The distinction between the accounts</p> <p>18 maintained at the DTC and the securities</p> <p>19 contained in those accounts?</p> <p>20 A. At which point in time are you</p> <p>21 referring to?</p> <p>22 Q. At any point in time.</p> <p>23 A. At any point in time. I believe</p> <p>24 Barclays made it clear to DTC that it was not</p> <p>25 acquiring any liabilities of Lehman relating to</p>

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<p>1 J. HUGHES</p> <p>2 DTC, that Barclays was not acquiring the Lehman</p> <p>3 accounts at DTC, and I believe made it clear</p> <p>4 that there were securities of Lehman Brothers</p> <p>5 that typically clear through DTC which were to</p> <p>6 be acquired by Barclays.</p> <p>7 I believe all of those points were</p> <p>8 made clear prior to the closing and prior to the</p> <p>9 signing of the DTC agreement and I can't be</p> <p>10 certain about what I am about to say, but I</p> <p>11 believe that representatives of Barclays at</p> <p>12 Cleary have on more than one occasion reiterated</p> <p>13 some or all of those points to DTC.</p> <p>14 Q. Who at Cleary had those discussions</p> <p>15 with DTC?</p> <p>16 A. I don't know whether those discussions</p> <p>17 included more -- people in addition to Ed Rosen,</p> <p>18 but I do believe it did include Ed Rosen.</p> <p>19 Q. When did Mr. Rosen have those</p> <p>20 discussions?</p> <p>21 A. I'm not certain as to the exact</p> <p>22 timing. I do think there were -- I do recall</p> <p>23 that there were discussions during the closing</p> <p>24 weekend. Precisely when, I'm not absolutely</p> <p>25 sure, and I believe there were discussions that</p>	<p>1 J. HUGHES</p> <p>2 post-dated the closing and the signing of the</p> <p>3 DTC agreement. Though again, I'm less certain</p> <p>4 about the fact of those additional discussions</p> <p>5 and, therefore, necessarily the content of them.</p> <p>6 Q. When did the post-closing discussions</p> <p>7 between Mr. Rosen and DTC occur?</p> <p>8 A. I'm really not sure.</p> <p>9 Q. Can you give me a month?</p> <p>10 A. No.</p> <p>11 Q. Can you give me a year?</p> <p>12 A. I believe there may have been</p> <p>13 discussions in the fourth quarter of 2008 and I</p> <p>14 believe there may have been been discussions in</p> <p>15 2009. Again, I wouldn't be able to say with</p> <p>16 certainty, and while I have had discussions with</p> <p>17 Ed Rosen about a whole variety of different</p> <p>18 issues, I don't recall -- I certainly can't</p> <p>19 recall now whether we identified when those</p> <p>20 discussions might have occurred.</p> <p>21 Q. With respect to the 2009 discussions,</p> <p>22 can you give me a quarter in 2009 that those</p> <p>23 discussions occurred?</p> <p>24 A. Really wouldn't be sure at this point.</p> <p>25 It's possible there were discussions in each</p>
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<p>1 J. HUGHES</p> <p>2 quarter, but I really, I really couldn't say.</p> <p>3 Q. With whom at DTC did Mr. Rosen have</p> <p>4 these discussions?</p> <p>5 A. I think one or more of Don Thompson --</p> <p>6 sorry, Larry Thompson, I think, and one other</p> <p>7 individual who I believe is the chief executive</p> <p>8 of DTC whose name is eluding me. If anybody can</p> <p>9 help me with that, I would be able to tell you</p> <p>10 whether it is right or wrong.</p> <p>11 Q. When you saw one or more --</p> <p>12 A. I think he had discussions with Larry</p> <p>13 and also with chief executive of DTC, but I'm</p> <p>14 not absolutely sure about that.</p> <p>15 Q. And specifically, can you tell me what</p> <p>16 was said in those discussions about the</p> <p>17 distinction between the accounts at DTC and the</p> <p>18 securities contained in those accounts?</p> <p>19 A. Yeah, I can't tell you specifically.</p> <p>20 As I said earlier, the serial distinctions or</p> <p>21 the serial comments that I made in answer to</p> <p>22 your question earlier, I believe were covered or</p> <p>23 some of them may have been covered, but I</p> <p>24 couldn't say with any degree of certainty.</p> <p>25 Q. Let me ask you with respect to the</p>	<p>1 J. HUGHES</p> <p>2 discussions prior to the closing. Did anyone</p> <p>3 other than Mr. Rosen have discussions concerning</p> <p>4 this distinction with the DTC?</p> <p>5 A. As I have earlier defined this</p> <p>6 distinction, yes.</p> <p>7 Q. Who other than Mr. Rosen?</p> <p>8 A. There were discussions involving, at</p> <p>9 one point, I believe Larry Thompson, if I am</p> <p>10 getting his name correct. But I have a greater</p> <p>11 recollection of representatives of DTC, I think</p> <p>12 in the form of their lawyers, who I believe were</p> <p>13 Proskauer at the time. I can't remember the</p> <p>14 specific names of individuals, but I do recall</p> <p>15 specific discussions between representatives of</p> <p>16 Barclays and such representatives prior to the</p> <p>17 signing of the DTC letter and prior -- and</p> <p>18 therefore, by definition, prior to the closing.</p> <p>19 Q. And you have mentioned Mr. Thompson</p> <p>20 and Proskauer. Anyone else?</p> <p>21 A. On the other side? I wouldn't be able</p> <p>22 to say. My sense was there were other people on</p> <p>23 the phone, but they were telephone</p> <p>24 conversations, so I couldn't say with certainty</p> <p>25 who else was present on the other side of the</p>

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phone.

Q. Other than -- did you participate in these conversations?

A. I did. Well, I participated in some or part of those conversations. But not necessarily -- I didn't participate in all of them.

Q. And other than you and Mr. Rosen who on the Barclays side, who else participated in these discussions?

A. The only other person I can recall specifically being there when I was there was Alan Kaplan who is, as I have said, a member of my department.

Q. When did these conversations happen, the preclosing discussions?

A. Again, it is hard to say with certainty given how much was happening at that time, how frenetic the whole thing was and how little sleep everybody had had.

My best recollection of the discussion that I was involved with or the discussions that I was involved with, they were probably on the Thursday night, but it's possible they were on

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Friday night. I don't think they were after the Friday night.

And the reason I say that is that I recall the discussions taking place at whatever time in Alan Kaplan's office at 200 Park Avenue and the reason that that's relevant is that as of Saturday morning, I was constantly at the offices of Weil Gotshal right up until and through the closing. Exactly what time I arrived at the offices of Weil Gotshal on Saturday morning, I couldn't now remember, but I am pretty certain that the discussions did not take place after 6 or 7 o'clock in the morning on Saturday of what I guess would be the 20th.

And again, I do have a recollection of a quite lengthy discussion involving the DTC. It also was a discussion relating to DTC's concern with respect to its own potential loss and included the points I made several moments ago now with respect to our urging DTC to come up with what we thought was a realistic proposition around its potential loss because the urging was done by me.

Q. What did DTC say about its concerns

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about its exposures to Lehman?

A. I don't recall particular words. It was clear at the beginning of the discussion that they contended a much broader potential -- or much greater potential loss than I thought was rational and I conveyed my thoughts about their irrationality at the time and, as I have said, urged them to come to what I thought was a realistic view which again, as I have said, they ultimately did.

Q. Can you tell me whether anyone from Barclays or representing Barclays had any discussions with anyone at DTC after the Friday night?

A. Anyone at Barclays after the Friday night? I don't know the answer to that question. It's possible that -- it's possible that Alan Kaplan had additional conversations with DTC. It's possible that Gerard Larocca had discussions with DTC. It's possible that other members of the operations function at Barclays had discussions with DTC. I couldn't tell you.

Q. You are not aware of any discussions after the Friday night?

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A. Well, I'm not aware of any discussions on this particular topic. I think there is a decent chance, although I wouldn't know with any certainty, that there were other discussions with DTC.

Q. I'm just asking if your from your knowledge --

A. I'm not aware of others.

Q. Who at the Cleary was responsible for negotiating the clarification letter?

A. I think it was a combination of Cleary lawyers that I have previously referred to. The responsibility I would say was shared among Vic Lewkow, Bob Davis, Ed Rosen, Duane McLaughlin, Lindsee Granfield and others. There were a lot of people. No specific individual was delegated with the actual comprehensive responsibility.

Many of those lawyers were having discussions throughout the period of the 17th through the 22nd with many different people. From time to time, naturally, they would have communicated either with me or other member of my department about aspects of that negotiation about aspects of the discussions they had with

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those many other people at Weil or representing the trustee or the creditors committee or indeed anybody else. So I think there were lots of people that were responsible for it.

Q. You have that Exhibit 156B still in front of you?

A. Yup.

Q. If you would turn to the third page, page 3 of Ms. Granfield's letter. If you look at the top and you will see the second full sentence reads, "Nothing in this letter or in Exhibit B should be construed to suggest that a portion of the securities in the LBI clearance boxes at the time of closing equal to the quantity of long customer positions in such securities were not sold to Barclays pursuant to the asset purchase agreement as clarified by the clarification letter."

Do you see that, sir?

A. I do.

Q. Now, Ms. Granfield here is referring to a portion of security. Do you see that?

A. Can I read the whole sentence?

Q. Absolutely.

J. HUGHES

A. OK, I see it.

Q. Do you understand that she is referring to a particular portion of securities there?

A. She certainly uses the --

Q. Maybe I will try it a different question. Do you understand what she is saying there?

A. No.

WITNESS' ATTORNEY: Would this be a good time to take a little break, just two minutes.

MR. MAGUIRE: Sure, sure. That's OK, we can take a break.

(Recess)

(Exhibit 563C, letter dated May 13, 2009 marked for identification, as of this date.)

Q. Sir, I have shown you a document we have marked as Exhibit 563C. It is a letter dated May 13 at 2009 from you to Mr. Giddens, is that correct?

A. Yes.

Q. If you turn it, sir, to page 4 of your

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letter and see the first full paragraph begins, "By Sunday night, September 21," and it continues.

A. Yup.

Q. Can you tell me, sir, what's the basis for that sentence?

WITNESS' ATTORNEY: Why don't you review the sentence in context.

Q. Take as much time as you need, sir.

A. I believe the basis for the statement is that by that point in time, it had become clear from DTC that the 250 million dollar limited recourse guarantee that's also referred to in this paragraph would be sufficient to cover DTC's exposure.

As I said earlier, there had been a discussion with DTC on the topic and I assume that in this -- in the beginning of this paragraph, I'm making a reference to the final agreement from which it was fair to conclude that DTC had concluded that its exposure was, in fact, less than it originally feared and that was my understanding at the time.

Q. And that DTC did not need any

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protection beyond the 250 million dollars that Barclays had agreed to deposit?

A. Whether, in fact, they needed to or not, I believe that that was what we had agreed by that point in time.

Q. Any other basis for that sentence by Sunday night?

A. I think the tenor of the discussion that I had, that I had -- that I have earlier referred to suggested to me that DTC would reassess its concerns associated with that -- with those exposures. I didn't know at the conclusion of that discussion that they would, in fact, agree that they really didn't need the kind of indemnity that they had first proposed and that they needed something considerably less.

But because I felt at the time that it was an objectively sustainable notion, I certainly hoped that they would, as I then viewed it, see reason. The point being that DTC was in possession of all the necessary information to understand the long and short positions that were relevant to LBI in the DTC

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<p>1 J. HUGHES</p> <p>2 system and ought to have been able, therefore,</p> <p>3 to determine not exactly by any means, but with</p> <p>4 a reasonable degree of accuracy what that net</p> <p>5 exposure might actually look like.</p> <p>6 Q. Let me ask you about the --</p> <p>7 A. But I should just say, Barclays was</p> <p>8 clearly not in such a position to make that</p> <p>9 estimation.</p> <p>10 Q. Let me ask you about the assets that</p> <p>11 were in the DTC clearance box. What due</p> <p>12 diligence did Barclays perform on those assets?</p> <p>13 A. What do you mean by "due diligence"?</p> <p>14 Q. What investigation did Barclays do</p> <p>15 concerning those assets?</p> <p>16 A. Can you be a bit more specific about</p> <p>17 what you mean by investigation?</p> <p>18 Q. Anybody go to DTC?</p> <p>19 A. Not that I'm aware of.</p> <p>20 Q. Did anybody get a schedule of those</p> <p>21 assets?</p> <p>22 A. I believe a schedule of assets was</p> <p>23 provided or whether it was described as a</p> <p>24 schedule or not initially, I don't think it was.</p> <p>25 But a listing, as I mentioned earlier, of what</p>	<p>1 J. HUGHES</p> <p>2 were represented as the clearance box assets was</p> <p>3 provided on the morning of Friday the 19th by</p> <p>4 Lehman Brothers to Barclays.</p> <p>5 I believe that listing changed over</p> <p>6 time, on more than one occasion, but that there</p> <p>7 was an attempt to identify the actual</p> <p>8 securities, CUSIP-by-CUSIP. I believe it was</p> <p>9 ultimately referred to as schedule B, but I</p> <p>10 could be wrong, I've often confused schedules,</p> <p>11 A, B, Exhibits A and B and other such</p> <p>12 appendages.</p> <p>13 Q. Did Barclays send any of its</p> <p>14 operations people to DTC's offices at any time</p> <p>15 prior to the closing?</p> <p>16 A. At any time prior to the closing, I</p> <p>17 don't know the answer to that question. It's</p> <p>18 possible that Gerard Larocca asked members of</p> <p>19 the operations function to do that, but I don't</p> <p>20 recall.</p> <p>21 Q. Did Barclays ask any of its employees</p> <p>22 to determine whether there were any liabilities</p> <p>23 associated with any of the assets in the DTC</p> <p>24 boxes?</p> <p>25 WITNESS' ATTORNEY: Objection to the</p>
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<p>1 J. HUGHES</p> <p>2 form.</p> <p>3 Do you understand the question?</p> <p>4 A. I'm not sure. Could you just repeat</p> <p>5 the question.</p> <p>6 Q. Let me try a different way. Did</p> <p>7 anyone at Barclays use the term "cats and dogs"</p> <p>8 with respect to the assets in the clearance box?</p> <p>9 A. I don't know whether anybody used that</p> <p>10 particular term, but I believe that when the</p> <p>11 assets were first shown or -- to Barclays or</p> <p>12 soon thereafter, Mike Keegan and/or Stephen King</p> <p>13 on behalf of Barclays reviewed that listing of</p> <p>14 assets and I believe concluded two things: One,</p> <p>15 it was impossible in the time available to</p> <p>16 assess whether or not those assets had the</p> <p>17 values that the Lehman Brothers representatives</p> <p>18 had ascribed to them, and, two, I believe Mike</p> <p>19 Keegan felt that there was a good possibility</p> <p>20 that there was a substantial difference between</p> <p>21 the represented values and the likely actual</p> <p>22 realizable values.</p> <p>23 Q. Did anyone at Barclays use the term</p> <p>24 "nails and hammers" with respect to the</p> <p>25 clearance box assets?</p>	<p>1 J. HUGHES</p> <p>2 A. Again, I've heard both that term and</p> <p>3 the earlier term you used. But I don't recall</p> <p>4 ever being present when such a description was</p> <p>5 given.</p> <p>6 If those two terms mean to you</p> <p>7 anything of the type that I have just described,</p> <p>8 then maybe they were said. I don't know.</p> <p>9 Q. Was there a discussion among the</p> <p>10 Barclays operations people in which it was</p> <p>11 advised that Barclays should not take the assets</p> <p>12 without the ability to cherry-pick and to leave</p> <p>13 behind and not take certain assets in the DTC</p> <p>14 clearance box?</p> <p>15 A. I'm not aware of any such discussion</p> <p>16 involving Barclays' operations people.</p> <p>17 Q. Now, what about with -- involving Mike</p> <p>18 Keegan or Stephen King?</p> <p>19 A. I'm not aware of discussions involving</p> <p>20 either Mike Keegan or Stephen King that relate</p> <p>21 to cherry-picking of assets as you describe it.</p> <p>22 Q. Was it Barclays' intention in taking</p> <p>23 on the clearance boxes to --</p> <p>24 A. Can I just -- Barclays did not take on</p> <p>25 the clearance boxes. Barclays agreed that it</p>

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<p>1 J. HUGHES</p> <p>2 would acquire a, as part of the purchase,</p> <p>3 unencumbered securities which by definition, I</p> <p>4 believe, and certainly Barclays understood to be</p> <p>5 assets free and clear to be delivered. They</p> <p>6 were defined or referred to as, at the time, as</p> <p>7 unencumbered assets in Lehman's clearance boxes.</p> <p>8 Q. Right. In the -- in entering into the</p> <p>9 clarification letter, did Barclays intend to</p> <p>10 retain the discretion and the right to be able</p> <p>11 to return any clearance box assets to Lehman?</p> <p>12 A. I don't believe there was a discussion</p> <p>13 of the type you describe. I believe at the</p> <p>14 time, Barclays had received a representation</p> <p>15 from Lehman that this was one identified</p> <p>16 category of assets that could be transferred.</p> <p>17 And because they were unencumbered, naturally,</p> <p>18 Barclays would have the right, all of the rights</p> <p>19 with respect to an unencumbered asset that you</p> <p>20 would expect them to have with respect to an</p> <p>21 unencumbered asset.</p> <p>22 Q. If you could turn to the clarification</p> <p>23 letter that's Exhibit 25, I believe, before you.</p> <p>24 And I would invite to you look at the very</p> <p>25 bottom of the first page and all see a</p>	<p>1 J. HUGHES</p> <p>2 parenthetical that begins "provided however."</p> <p>3 A. Is this the actual signed</p> <p>4 clarification letter again?</p> <p>5 Q. Exhibit 25, yes.</p> <p>6 A. I see the beginning of the</p> <p>7 parenthetical.</p> <p>8 Q. If you could read that full</p> <p>9 parenthetical and anything else that you need to</p> <p>10 in that sentence just so you understand the</p> <p>11 context.</p> <p>12 A. Yup.</p> <p>13 Q. What was Barclays' intention in</p> <p>14 retaining this right to give certain assets from</p> <p>15 the box back to Lehman within 60 days?</p> <p>16 WITNESS' ATTORNEY: You can answer</p> <p>17 that provided you can do so without</p> <p>18 revealing privileged information.</p> <p>19 I guess to some extent, this is asking</p> <p>20 for an interpretation of the agreement.</p> <p>21 MR. MAGUIRE: No, I'm asking why</p> <p>22 Barclays wanted this provision?</p> <p>23 WITNESS' ATTORNEY: Why this was</p> <p>24 inserted?</p> <p>25 MR. MAGUIRE: Yes.</p>
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<p>1 J. HUGHES</p> <p>2 WITNESS' ATTORNEY: Can you answer</p> <p>3 that without disclosing privileged</p> <p>4 information or do you --</p> <p>5 MR. MAGUIRE: I'm not looking for</p> <p>6 legal advice. I want to know why Barclays</p> <p>7 wanted the right to give assets back.</p> <p>8 WITNESS' ATTORNEY: You can answer</p> <p>9 that if you know why Barclays wanted the</p> <p>10 right to give assets back.</p> <p>11 A. I don't know the answer. I don't know</p> <p>12 the answer.</p> <p>13 Q. Did Barclays have a concern that</p> <p>14 certain of these assets may be more in the</p> <p>15 nature of liabilities or may have associated</p> <p>16 liabilities which would make them more trouble</p> <p>17 than they were worth?</p> <p>18 A. I don't know whether at the time such</p> <p>19 a determination was reached. I do know that</p> <p>20 Barclays was concerned at the time, A, with</p> <p>21 respect to the value of the securities in</p> <p>22 question and, B, that it had no opportunity to</p> <p>23 conduct any real analysis with respect to those</p> <p>24 securities to make judgments of the type you</p> <p>25 have questioned me about.</p>	<p>1 J. HUGHES</p> <p>2 So I do know there was concern about</p> <p>3 identity of assets. There was concern about</p> <p>4 value of those assets, all compounded by the</p> <p>5 lack of time in which to conduct any real</p> <p>6 inquiry.</p> <p>7 I should add that the Lehman</p> <p>8 representations did describe the assets as</p> <p>9 unencumbered. But as I say, we had no ability</p> <p>10 really to ascertain fully what it was that we</p> <p>11 were going to be delivered.</p> <p>12 Q. So you did not know at the time and</p> <p>13 prior to closing whether any of the assets</p> <p>14 within the DTC box, clearance box, were, in</p> <p>15 fact, net liabilities?</p> <p>16 WITNESS' ATTORNEY: Objection to the</p> <p>17 form.</p> <p>18 A. I don't know that. I think the right</p> <p>19 people to ask that -- to ask that question of</p> <p>20 would be Mike Keegan or Stephen King and I have</p> <p>21 not spoken to either of the two of them</p> <p>22 specifically to prepare for this deposition. I</p> <p>23 have spoken to each of them over the course of</p> <p>24 time, but not on this particular point.</p> <p>25 But I would expect that if anybody at</p>

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Barclays knows the answer to your question with respect to specific securities, it would be either one of those two. And possibly one or two other people on Stephen King's team as it then was. Jasen Yang I believe is someone you have also had an opportunity to speak with. It is conceivable that Jasen may have had some appreciation of the type that you're referring to.

Those are the guys we relied upon to identify the assets and to try at least to form any conclusions about them.

Q. Mr. Keegan and Mr. King, what were their respective roles?

A. When you say respective roles, you mean as employees of Barclays or with respect to the transaction?

Q. Specifically with respect to the transaction.

A. Well, I think they had a -- I think they had a number of roles associated with --

Q. Let me make it even narrower, let me just make it respect to the clearance boxes.

A. I would say they had roles, but

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the 19th of September, Lehman Brothers conducted an exercise to try to identify particular assets and their values that could be conveyed as part of the sale transaction.

And one of the assets that on the morning of the 19th, there was described or represented by Lehman as being capable of being transferred was what they described as the excess in the 15c33 reserve account.

I believe that at that time, the Lehman Brothers representatives thought and indeed mentioned to Barclays that there was roughly, I think, one-half or 1.7 billion dollars of such an excess. And that that would be capable of being identified and transferred as part of the transaction.

Subsequently, during the course of the closing weekend, that number of 1.7 billion, roughly, was reduced to 769 million dollars of securities and that was ultimately the agreed identified value within this category that Lehman agreed to convey.

Partly, I believe, if not wholly, Barclays' understanding at the time, partly

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certainly Barclays turned to both of Mike Keegan and Stephen King to consider the nature and value of a number of different assets, but included in those would be the nature and value of the assets that had been listed as included in the clearance boxes.

As I said, they had a very limited opportunity in which to do that, but those are the people whom Barclays relied to make such determinations or judgments about them as we could.

Q. Let me switch gears on you and ask you about the C3 asset. You remember that the clarification letter which is in front of you refers to a number of 769 million dollars in that regard.

A. I think it should.

WITNESS' ATTORNEY: I don't know if it is 8.

A. It is 8, right?

Yes.

Q. How was that number negotiated?

A. Overnight. Overnight on Thursday, the 18th of September, rolling into the morning of

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because of what I believe to have been a mistaken impression on the part of Harvey Miller at Weil Gotshal that there might need to be some regulatory approval to transfer those securities, it was agreed that Lehman Brothers would transfer those securities or other securities that were equivalent. In other words, either those securities actually identified or another 769 million dollars of securities.

Q. How was the number 769 chosen?

A. I believe it came from a combination of discussions and initially a reference to an e-mail which I believe was later seen by some, though by whom I'm not sure, and the discussions in the e-mail I believe referred to representatives of Lehman Brothers having had discussions with the SEC in which the SEC had agreed that a certain amount of that excess was available to be transferred and I think in that set of communications, I think including the e-mail, there was a specific reference to 769 million dollars of securities. At least I think that's where the 769 came from originally.

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Q. Did the 769 result from -- did that represent the total amount of noncash assets in the C3 account?

A. I did not know what was in the C3 account, I did not know nor do I know what was in the C3 account.

I believe that 769 was represented as the total amount of securities in the excess in the C3 account.

Q. Was there any discussion about any cash excess?

A. I believe that there was cash included in the excess and I believe there was cash referred to in those communications and the e-mail that I had referred to. But I don't recall any discussion -- there certainly was not any discussion on the Friday morning when the topic first was raised about the constituent parts of the C3 account or the reserve.

Q. Was there any discussion by anyone at Barclays about whether it could get cash from the C3 account?

A. Whether it could get cash from the C3 account. Again, I didn't think there was any

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discussion about anything relating to the C3 account other than the excess in the C3 account.

Q. Right, was there any discussion by Barclays about getting any cash excess from the C3 account?

A. I don't know whether there was any discussions involving anybody from Barclays or its representatives relating to cash specifically. I believe there was a discussion on, at some point during Sunday afternoon, of the closing weekend in which, as I mentioned earlier, Harvey Miller, I believe, raised his mistaken belief that there was a need to have some kind of SEC approval.

And it's possible that in that discussion, there was a reference -- there was reference to cash. I believe that at some point, Michael Klein was involved in that discussion, though I did speak with him about that and his recollection about it was not very strong or clear. So I couldn't say with certainty that there were any discussions involving Barclays or its representatives relating to cash in this context.

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Q. Right. Now, you said Mr. Miller had a mistaken belief that regulatory approval was required for any part of the C3 asset to be conveyed to Barclays, is that correct?

A. I think I did say that. Yes. That, I should say, is my belief, that his was a mistaken belief.

Q. Have you discussed that issue with anyone at the SEC?

A. No.

Q. Is it your understanding that Barclays' entitlement to, anything from the C3 account is subject or is not subject to SEC approval?

A. It's my understanding that both now and at the time that any excess in the C3 account was the property of Lehman Brothers, that that property was part of the Lehman Brothers North American business and it was therefore capable of being transferred as part of the purchase without SEC approval or indeed anybody else's approval.

Because a question had been raised on the Sunday afternoon, albeit I believe that

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Barclays drew no conclusion at that point in time about that concern or question, that Barclays nevertheless felt it was appropriate at that point to cover that question by agreeing with Lehman Brothers that the delivery would be of the 769 within the excess or another 769 million dollars worth of securities and I believe that that's -- that also would not have required any SEC or anybody else's approval.

Q. So if I understand this, the sequence right, Mr. Miller expressed a belief that you think was mistaken and that's about getting the need to get SEC approval?

A. That I believe -- I was not a party to that discussion. I believe -- that discussion was reported to me subsequently, I can't recall precisely when it was first reported to me. I now believe that to be a mistaken belief. But I think that was the provenance of the additional part of the agreement; that in any event, Lehman committed to delivering 769 million dollars of securities.

Q. And so when did this discussion with Mr. Miller happen about -- that concerned his

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<p>1 J. HUGHES</p> <p>2 belief that SEC approval was required?</p> <p>3 A. I believe it was sometime on the</p> <p>4 Sunday afternoon.</p> <p>5 Q. With whom did that discussion -- who</p> <p>6 were the participants pants in that discussion?</p> <p>7 A. The person who recalls it best is Vic</p> <p>8 Lewkow at Cleary Gottlieb. As I mentioned</p> <p>9 earlier, he, Vic, recalled that Harvey Miller</p> <p>10 was there, that at some -- for some portion of</p> <p>11 the discussion, Michael Klein was there. I</p> <p>12 don't recall whether anybody else was present, I</p> <p>13 couldn't say.</p> <p>14 Q. And while Barclays felt that belief</p> <p>15 was mistaken, it nonetheless agreed that any</p> <p>16 transfer of the excess would be subject to SEC</p> <p>17 approval, is that correct?</p> <p>18 A. I don't know whether at the time</p> <p>19 either Vic Lewkow or Michael Klein knew whether</p> <p>20 that belief was mistaken or not. But I do</p> <p>21 believe that it was agreed at that point -- it's</p> <p>22 possible it was agreed both before and after,</p> <p>23 but that in any event, 769 million dollars of</p> <p>24 securities would be transferred.</p> <p>25 Q. And based on this belief of Mr. Miller</p>	<p>1 J. HUGHES</p> <p>2 which Lehman decided to agree with --</p> <p>3 A. Sorry to interrupt you, can I just</p> <p>4 add, I think I mentioned -- and if I didn't, I</p> <p>5 would like to mention that it had by that stage,</p> <p>6 I believe, been mentioned that the SEC had</p> <p>7 agreed that the excess could be transferred.</p> <p>8 Now, I could be wrong about the actual</p> <p>9 chronology of events there, it is hard to recall</p> <p>10 precisely, but as I mentioned earlier, there</p> <p>11 were communications and there was, I believe, an</p> <p>12 e-mail referring to, among other things, the 769</p> <p>13 and the apparent approval of the SEC.</p> <p>14 Now, I don't know whether that came up</p> <p>15 before the discussion on the Sunday afternoon or</p> <p>16 after it, but I just mention it it is possible</p> <p>17 it came up before as well, I don't know.</p> <p>18 Q. If we leave a space in the transcript,</p> <p>19 you can refer us to the e-mail that you are</p> <p>20 referring to.</p> <p>21 A. Yeah, I think I can.</p> <p>22 WITNESS' ATTORNEY: Yes, we can do</p> <p>23 that.</p> <p>24 (Insert: _____)</p> <p>25 Q. If you look at Exhibit 25, if you have</p>
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<p>1 J. HUGHES</p> <p>2 it in front of you, section 8, this is part ii,</p> <p>3 why did Barclays agree to the language "to the</p> <p>4 extent permitted by applicable law"?</p> <p>5 A. I don't think I have a nonprivileged</p> <p>6 answer to that question.</p> <p>7 Q. Did anyone ever -- did anyone ever</p> <p>8 agree with Barclays that the transfer of this</p> <p>9 769 million dollars would be unconditional?</p> <p>10 WITNESS' ATTORNEY: Are you asking for</p> <p>11 him to interpret the words in the</p> <p>12 clarification letter?</p> <p>13 Q. No. Did at any time over the</p> <p>14 weekend --</p> <p>15 WITNESS' ATTORNEY: Are you talking</p> <p>16 about oral?</p> <p>17 Q. Was there any discussion in which</p> <p>18 anyone said to Barclays, 769 million, you will</p> <p>19 get, unconditionally. Did that discussion ever</p> <p>20 happen?</p> <p>21 A. I believe that the understanding</p> <p>22 between Lehman Brothers and Barclays was clear</p> <p>23 that the excess in the C3 reserve account was</p> <p>24 both available and could be transferred. I</p> <p>25 believe that there was an agreement</p>	<p>1 J. HUGHES</p> <p>2 unconditionally to transfer 769 million dollars</p> <p>3 worth of securities. I believe that was</p> <p>4 Barclays' understanding of the agreement between</p> <p>5 Barclays and Lehman Brothers. I also believe it</p> <p>6 was Lehman Brothers' understanding of the</p> <p>7 agreement with Barclays.</p> <p>8 Q. Did anyone at Lehman say that Barclays</p> <p>9 would get 769 million pursuant to this term</p> <p>10 unconditionally?</p> <p>11 A. I'm not aware of the use of the word</p> <p>12 "unconditionally." But I believe that Lehman</p> <p>13 Brothers and Barclays both understood at the</p> <p>14 time that 769 million dollars of securities</p> <p>15 would be included in the assets to be</p> <p>16 transferred to Barclays no later than a point</p> <p>17 promptly after the closing of the transaction.</p> <p>18 Q. Did anyone tell --</p> <p>19 A. And I don't believe that Lehman</p> <p>20 Brothers ever felt then or subsequently that</p> <p>21 they had any right to withhold 769 million</p> <p>22 dollars of securities.</p> <p>23 Q. Did anyone from Lehman tell anyone at</p> <p>24 Barclays that Barclays would get 769 million</p> <p>25 dollars without SEC approval?</p>

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<p>1 J. HUGHES</p> <p>2 WITNESS' ATTORNEY: Objection to the</p> <p>3 form.</p> <p>4 A. I am -- I am not aware of any such</p> <p>5 expression, but I believe that such an</p> <p>6 expression was unnecessary given the</p> <p>7 representations previously made and the</p> <p>8 agreement that was ultimately reached as it is</p> <p>9 described in part in paragraph 8.</p> <p>10 Q. You see towards the end of the</p> <p>11 sentence we have been talking about, there is</p> <p>12 the words, "are securities of substantially the</p> <p>13 same nature and value." Do you see that?</p> <p>14 A. I do see that.</p> <p>15 Q. Who proposed that language?</p> <p>16 A. I don't know.</p> <p>17 Q. Why was it proposed?</p> <p>18 WITNESS' ATTORNEY: Can you answer</p> <p>19 that without disclosing privileged</p> <p>20 communications?</p> <p>21 A. I don't think I can answer that in any</p> <p>22 nonprivileged way.</p> <p>23 Q. What discussions were there between</p> <p>24 Barclays and anyone else concerning those words?</p> <p>25 A. Again, I don't think I can answer that</p>	<p>1 J. HUGHES</p> <p>2 question without implicating privileged</p> <p>3 discussions.</p> <p>4 Q. I'm not asking for internal Barclays</p> <p>5 discussions. I am only asking for discussion</p> <p>6 between Barclays and anyone representing</p> <p>7 Barclays and Lehman or anyone else outside of</p> <p>8 the Barclays family?</p> <p>9 A. But you're asking me with respect to</p> <p>10 this specific language.</p> <p>11 Q. Yeah, what discussions did anyone at</p> <p>12 Barclays or anyone representing Barclays have</p> <p>13 with the trustee, with Weil, with the creditors</p> <p>14 committee, anyone else concerning the words, "or</p> <p>15 securities of substantially the same nature and</p> <p>16 value"?</p> <p>17 WITNESS' ATTORNEY: Let's discuss this</p> <p>18 because you have a privilege concern.</p> <p>19 MR. MAGUIRE: I think actually --</p> <p>20 WITNESS' ATTORNEY: No, we are</p> <p>21 entitled to confer on privileged concerns.</p> <p>22 I'm not sure what his concern is. So let me</p> <p>23 discuss it.</p> <p>24 MR. MAGUIRE: Let me -- before you</p> <p>25 take the break --</p>
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<p>1 J. HUGHES</p> <p>2 WITNESS' ATTORNEY: No, no, no. We</p> <p>3 are going to just talk for two seconds out</p> <p>4 here.</p> <p>5 MR. MAGUIRE: Very well. The record</p> <p>6 will reflect the witness has again left the</p> <p>7 room.</p> <p>8 (Recess)</p> <p>9 WITNESS' ATTORNEY: I think the</p> <p>10 witness can answer this question because it</p> <p>11 calls for communications between Barclays</p> <p>12 and Lehman, I believe.</p> <p>13 Q. Do you remember the question, sir?</p> <p>14 A. I do. I do remember the question</p> <p>15 though I am -- I cannot recall any conversations</p> <p>16 of the type you referred to as hard as I might</p> <p>17 try.</p> <p>18 Q. And that includes whatever you have</p> <p>19 learned in preparation for this deposition?</p> <p>20 A. Yes.</p> <p>21 (Pause)</p> <p>22 Q. Sir, I show you what we will mark as</p> <p>23 564C, your notice of deposition.</p> <p>24 (Exhibit 564C, Notice of Deposition</p> <p>25 marked for identification, as of this date.)</p>	<p>1 J. HUGHES</p> <p>2 Q. If you will turn, sir, to page 13, you</p> <p>3 will see a topic number 23.</p> <p>4 A. Page 13, topic --</p> <p>5 Q. The very stop, I am sorry, topic 13,</p> <p>6 whatever page it is on, 23. It is on page 7, I</p> <p>7 am sorry, I misspoke.</p> <p>8 A. Page 7. Topic --</p> <p>9 Q. 23?</p> <p>10 A. Topic 23.</p> <p>11 Q. Can you tell me what did you do to</p> <p>12 prepare yourself to address that topic?</p> <p>13 A. I spoke with people internally at</p> <p>14 Barclays and at Barclays and with external</p> <p>15 lawyers who had acted on behalf of Barclays</p> <p>16 about OCC margin and some of those discussions</p> <p>17 were discussions had quite recently. But I also</p> <p>18 carried with me coming into today the</p> <p>19 recollections of some discussions that I have</p> <p>20 had over the course of many months relating to</p> <p>21 the OCC margin.</p> <p>22 Q. Are you in a position as you sit here,</p> <p>23 sir, to give me a complete list of all of the</p> <p>24 documents that Barclays created or prepared</p> <p>25 prior to September 22 of documents prepared or</p>

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2 concerning or reflecting its proposed purchase
3 of the OCC margin?
4 WITNESS' ATTORNEY: I am going object
5 because the topic itself is ambiguous, but
6 you can try to answer it. In other words,
7 as you know, we objected to many of these
8 topics as being unclear and this is a
9 perfect example.
10 But go ahead.
11 Q. The reason I ask, sir, is I don't want
12 to waste your time here, if you have a specific
13 list that you can give me, that's helpful. If
14 it would be easier to get it from your counsel,
15 I'm perfectly happy to do it that way as well.
16 A. I don't have a list of the type you
17 describe. And I'm not aware of Barclays'
18 creation of, preparation of documents of the
19 type described in question 23.
20 Q. If you were to ask -- if you needed to
21 pull together a complete list of all the
22 documents that Barclays created or prepared that
23 in any way reflected its acquisition of the OCC
24 margin, who would be the person who would pull
25 that together for you?

1 J. HUGHES
2 WITNESS' ATTORNEY: I am going to
3 object. It is an ambiguous request. It is
4 not at all clear what you are talking about.
5 You can try to answer.
6 A. I think my answer is the same as the
7 one I just gave you; namely, I'm not aware of
8 any documents that fit this description. There
9 may be some, I'm not aware of any.
10 MR. MAGUIRE: OK. I have no further
11 questions for you at this time, sir. Can we
12 go off the record.
13 (Discussion held off the record)
14 MR. STERN: Back on the record. We
15 have had a long day and I understand that
16 the debtors' counsel has questions that may
17 take hours and that creditors committee may
18 have questions.
19 So given the hour of the day, we have
20 agreed to continue this deposition. The
21 date we have agreed on is February 1 and we
22 (Continued on next page for jurat.)
23
24
25

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1 J. HUGHES
2 will talk about location and starting time.
3 But we will continue that.
4 Thanks, everybody.
5
6

JONATHAN HUGHES

7
8 Subscribed and sworn to
9 before me this day
10 of January, 2010.
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1 J. HUGHES
2 INDEX:
3 WITNESS EXAM BY: PAGE:
4 J. Hughes Mr. Maguire 6
5

6 EXHIBITS
7 Exhibit No. Marked
8 Exhibit 561C Document Bates stamped WGM 132
9 Lehman E00013236 through 46
10 Exhibit 562C Document Bates stamped 158
11 WGM-Lehman-E 0006263 through
12 6270
13 Exhibit 563C Letter dated May 13, 2009 207
14 Exhibit 564C Notice of Deposition 232
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J. HUGHES

CERTIFICATE

STATE OF NEW YORK)

)ss:

COUNTY OF NEW YORK)

I, MARY F. BOWMAN, a Registered
Professional Reporter, Certified Realtime
Reporter, and Notary Public within and for
the State of New York, do hereby certify:
That JONATHAN HUGHES, the witness
whose deposition is hereinbefore set forth,
was duly sworn by me and that such
deposition is a true record of the testimony
given by such witness.

I further certify that I am not
related to any of the parties to this action
by blood or marriage and that I am in no way
interested in the outcome of this matter.

In witness whereof, I have hereunto
set my hand this 15th day of January, 2010.

MARY F. BOWMAN, RPR, CRR

J. HUGHES

ERRATA SHEET

NAME OF CASE: In Re: Lehman Brothers

DATE OF DEPOSITION: 1/15/10

NAME OF WITNESS: Jonathan Hughes

Reason codes:

1. To clarify the record.

2. To conform to the facts.

3. To correct transcription errors.

Page ____ Line ____ Reason ____

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EXHIBIT L

1 IN THE UNITED STATES BANKRUPTCY COURT
2 FOR THE SOUTHERN DISTRICT OF NEW YORK
3
4

In re:)
5) Chapter 11
LEHMAN BROTHERS) Case No. 08-13555(JMP)
6 HOLDINGS, INC., et al,) (Jointly Administered)
)
7 Debtors.)
-----)
8
9
10
11

12 30(b)(6) DEPOSITION OF
13 CLEARY GOTTlieb STEEN & HAMILTON LLP
14 by
15 VICTOR I. LEWKOW
16 New York, New York
17 Wednesday, February 10, 2010
18
19
20
21
22

23 Reported by:
24 MAYLEEN CINTRON, RMR, CRR
25 JOB NO. 28226

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<p>1 2 3 4 February 10, 2010 5 10:02 a.m. 6 7 8 30(b)(6) DEPOSITION OF CLEARY 9 GOTTLIEB STEEN & HAMILTON LLP, by VICTOR I. 10 LEWKOW, held at the offices of Cleary 11 Gottlieb Steen & Hamilton LLP, 450 Park 12 Avenue, New York, New York, pursuant to 13 Notice, before MayLeen Cintron, a Registered 14 Merit Reporter, Certified Realtime Reporter, 15 and Notary Public of the State of New York. 16 17 18 19 20 21 22 23 24 25</p> <p>TSG Reporting - Worldwide 877-702-9580</p>	<p>1 A P P E A R A N C E S: 2 3 JONES DAY LLP 4 Attorneys for Debtors - Lehman Brothers, Inc. 5 222 East 41st Street 6 New York, New York 10017-6702 7 BY: ROBERT W. GAFFEY, ESQ. 8 BRIDGET CRAWFORD, ESQ. 9 10 BOIES, SCHILLER & FLEXNER LLP 11 Attorneys for Barclays 12 5301 Wisconsin Ave., N.W. 13 Washington D.C. 20015 14 BY: HAMISH HUME, ESQ. 15 16 17 QUINN, EMANUEL, URQUHART, 18 OLIVER & HEDGES LLP 19 Attorneys for the Creditors Committee 20 51 Madison Avenue - 22nd Floor 21 New York, New York 10010 22 BY: JAMES TECCE, ESQ. 23 24 25</p> <p>TSG Reporting - Worldwide 877-702-9580</p>
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<p>1 A P P E A R A N C E S: (Cont'd) 2 3 HUGHES, HUBBARD & REED LLP 4 Attorneys for the SIPA Trustee 5 One Battery Park Plaza 6 New York, New York 10004-1482 7 BY: WILLIAM R. MAGUIRE, ESQ. 8 AMINA HASSAN, ESQ. 9 10 11 CLEARY GOTTLIEB STEEN & HAMILTON LLP 12 Attorneys for the Witness: Victor Lewkow 13 One Liberty Plaza 14 New York, New York 10006 15 BY: BOAZ S. MORAG, ESQ. 16 ROBERT P. DAVIS, ESQ. 17 18 19 20 - - - 21 22 23 24 25</p> <p>TSG Reporting - Worldwide 877-702-9580</p>	<p>1 -Lewkow- 2 V I C T O R I. L E W K O W, 3 called as a witness, having been duly 4 sworn by a Notary Public, was examined 5 and testified as follows: 6 THE REPORTER: Please state your 7 full name for the record. 8 THE WITNESS: Victor -- do you need 9 a middle name? Ira Lewkow, L-E-W-K-O-W. 10 MR. GAFFEY: That's all we needed. 11 We just wanted to know your middle 12 name. 13 EXAMINATION BY 14 MR. GAFFEY: 15 Q. Good morning, Mr. Lewkow. My name 16 is Bob Gaffey, I'm from Jones Day and we are 17 special counsel to the Debtors in this 18 proceeding. 19 Have you had your deposition taken 20 before? 21 A. Once. 22 Q. In the interest of efficiency, I 23 will give you the short version of the usual 24 instructions. If at any point you don't 25 understand a question, please say so and I</p> <p>TSG Reporting - Worldwide 877-702-9580</p>

1 -Lewkow-
2 will try to rephrase it so we understand each
3 other. If you need a break at any time, say
4 so and we can do that.

5 (Telephone interruption.)

6 Q. If you need a break at any time,
7 just say so. If there is a question pending,
8 I prefer we get an answer on the record before
9 we take a break?

10 MR. GAFFEY: Let me ask the
11 reporter to mark, what's the next
12 exhibit, 613A, a copy of a declaration
13 submitted by Barclays in this matter.

14 (Deposition Exhibit 613A,
15 Declaration of Victor Lewkow, marked
16 for identification, as of this date.)

17 Q. Is that your Declaration, sir?

18 A. It is.

19 Q. Let me ask you to turn your
20 attention, please, to Paragraph 4 of your
21 Declaration.

22 By way of background, my questions
23 today will be about the sale transaction
24 that's at issue in this matter, that is the
25 transaction between Lehman and Barclays, to

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1 -Lewkow-
2 which I understand your Declaration is
3 addressed.

4 In Paragraph 4 of your Declaration,
5 you say, "The transaction was never discussed
6 or documented as what might be called a
7 'balance sheet' transaction, which would have
8 included pre-closing and/or post-closing
9 purchase price adjustment provisions relating
10 to a valuation of the transferred assets and
11 liabilities".

12 Is the term "balance sheet
13 transaction" a term of art of some kind?

14 MR. MORAG: Object to the form.

15 You can answer.

16 A. In many private acquisitions as
17 opposed to public company acquisitions, there
18 are price adjustments tied to an audited
19 balance sheet that is prepared as of the
20 closing date.

21 And I'm not sure if it is a broadly
22 used term, but it certainly is what I was
23 talking about. So...

24 Q. I'm sorry. Are you done with your
25 answer?

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1 -Lewkow-

2 A. Yes.

3 Q. So, there are not, I take it,
4 particular -- there is not a defined list of
5 things you expect to find, that you need to
6 see in a transaction in order to qualify as a
7 so-called "balance sheet transaction"; is that
8 right?

9 MR. MORAG: Objection to form.

10 A. I would say that in my experience,
11 in the context of buying a business where
12 there were a lot of financial assets valued
13 and liabilities, the value of which changed
14 over -- could change or would change or did
15 change over time between signing and closing
16 or between if there weren't represented -- a
17 representation by the seller as to the value
18 as of signing, starting date could be actually
19 earlier than the signing of the asset purchase
20 agreement.

21 If between whatever date a balance
22 sheet was represented as of and the closing
23 date, the value of the assets and liabilities
24 had changed and I would expect as part of a
25 balance sheet transaction, for there to be pre

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1 -Lewkow-
2 or post-closing price -- pre or post- closing
3 price adjustments.

4 Q. Now in the transaction that was
5 agreed between Lehman and Barclays initially
6 on September 16th, that is embodied in the
7 Asset Purchase Agreement, was there any such
8 purchase price adjustment provision?

9 A. There was no balance sheet audited
10 financial statement valuation type balance
11 sheet adjustment, no.

12 Q. Was there a purchase price
13 adjustment provision?

14 MR. MORAG: Object to form.

15 A. There was a -- I'm going to say --
16 my answer would be no in the usual sense. I
17 would comment, and I think that is what you're
18 getting at, we can call it -- if you want to
19 call it "purchase price adjustment", you
20 could, it is simply a matter of semantics.

21 But there was a provision in the
22 original deal -- there were two provisions
23 that had aspects of -- no. There was one
24 provision that had aspects of additional
25 consideration potentially flowing to the

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<p>1 -Lewkow-</p> <p>2 seller. There was a -- there was a provision</p> <p>3 that said that on a certain pool of positions,</p> <p>4 that we would be -- that Barclays would be</p> <p>5 acquiring at the closing, that if, as I</p> <p>6 recall -- and you know, without having the</p> <p>7 Agreement in front of me to look at the words,</p> <p>8 I always defer to what's in the contract.</p> <p>9 But my recollection is that the --</p> <p>10 there was a provision that if within some</p> <p>11 period, I think it was a year, to the extent</p> <p>12 that Barclays actually sold positions -- not</p> <p>13 what their value was on a given date or the</p> <p>14 like, not as audit, not if they held</p> <p>15 positions, even if those positions increased</p> <p>16 enormously in value or if they went down in</p> <p>17 value.</p> <p>18 But if with respect to some pool --</p> <p>19 and I don't remember the details of how it</p> <p>20 worked because that provision was later</p> <p>21 dropped, as you know. There was a provision</p> <p>22 that if -- with respect to some of those</p> <p>23 assets, if we -- if Barclays sold them during,</p> <p>24 I think, the first year, there would be some</p> <p>25 sharing of the -- of the profit compared to</p> <p>TSG Reporting - Worldwide 877-702-9580</p>	<p>1 -Lewkow-</p> <p>2 what -- I forget what the base was exactly, as</p> <p>3 to what date the assumed valuation was.</p> <p>4 So there was a provision for</p> <p>5 additional consideration potentially to flow</p> <p>6 to the seller.</p> <p>7 Q. I'll show you the Asset Purchase</p> <p>8 Agreement in a minute and we'll spend some</p> <p>9 time with it today.</p> <p>10 But is the provision that you</p> <p>11 described, is that fairly described as a</p> <p>12 post-closing purchase price adjustment</p> <p>13 provision?</p> <p>14 MR. MORAG: Objection. Asked and</p> <p>15 answered.</p> <p>16 A. Yeah, I have nothing more to say</p> <p>17 other than what I said on that subject.</p> <p>18 Q. I'm not sure I have an answer to</p> <p>19 the question as to whether it is -- the</p> <p>20 provision you described is what you would</p> <p>21 describe, and I'm referring to Paragraph 4 of</p> <p>22 your affidavit, as a "post-closing purchase</p> <p>23 price adjustment provision"?</p> <p>24 A. Well, with due respect, if you read</p> <p>25 my declaration, it says, "...a pre-closing</p> <p>TSG Reporting - Worldwide 877-702-9580</p>
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<p>1 -Lewkow-</p> <p>2 and/or post-closing purchase price adjustment</p> <p>3 provision relating to the valuation of the</p> <p>4 transferred assets and liabilities". This was</p> <p>5 not such a provision.</p> <p>6 Q. So to qualify as a balance sheet</p> <p>7 transaction, in your view, the pre or post</p> <p>8 closing purchase price adjustment provision</p> <p>9 would have to relate to a valuation of the</p> <p>10 assets and liabilities? It's that last piece,</p> <p>11 "valuation of the assets and liabilities" that</p> <p>12 defines it as a purchase price adjustment</p> <p>13 provision as you meant it in your Declaration?</p> <p>14 MR. MORAG: Object to form.</p> <p>15 A. As I said earlier, to me a balance</p> <p>16 sheet transaction is when you later prepare --</p> <p>17 I'm not sure that the word -- I would say do a</p> <p>18 valuation from an accounting standpoint. As a</p> <p>19 balance sheet, normally you would prepare a</p> <p>20 balance sheet based on generally accepted</p> <p>21 accounting principles, have it audited and</p> <p>22 adjust the purchase price based on that.</p> <p>23 Q. Is there a reason such a mechanism</p> <p>24 was not included in the transaction at issue</p> <p>25 here?</p> <p>TSG Reporting - Worldwide 877-702-9580</p>	<p>1 -Lewkow-</p> <p>2 A. You know, I would -- I don't recall</p> <p>3 whether at any point in time, whether Lehman</p> <p>4 or its advisors requested such a provision. I</p> <p>5 just don't recall. Certainly if they did, it</p> <p>6 came and went very quickly in the discussions</p> <p>7 of the concept of the Asset Purchase</p> <p>8 Agreement. But I don't recall there ever</p> <p>9 being such a provision.</p> <p>10 I would note that we were -- as</p> <p>11 everybody knew then and knows now, it was an</p> <p>12 incredibly volatile couple of days. The Asset</p> <p>13 Purchase Agreement was being negotiated on</p> <p>14 that Monday and Tuesday after Lehman had filed</p> <p>15 for Chapter 11 late Sunday night, early Monday</p> <p>16 morning.</p> <p>17 And I think the idea that anyone</p> <p>18 had a wonderfully exact knowledge as to what</p> <p>19 the value of portfolio assets in particular</p> <p>20 were at that point in time, it would be</p> <p>21 amazing because there was a very uncertain</p> <p>22 value at that point in time.</p> <p>23 Q. Did Cleary Gottlieb play any role</p> <p>24 in the negotiation of the transaction with</p> <p>25 regard to arriving at a valuation of the</p> <p>TSG Reporting - Worldwide 877-702-9580</p>

1 -Lewkow-

2 **assets to be transferred?**

3 MR. MORAG: Object to the form.

4 Vague.

5 A. No.

6 **Q. Were there negotiations between the**
7 **parties concerning the value of the assets to**
8 **be transferred?**

9 A. As described in my declaration,
10 there were discussions, I would not -- I don't
11 believe there was a negotiation, as I heard it
12 described. And I want to stay away from
13 privileged communications, although I'm not
14 sure I have any in particular in mind now.
15 But obviously, I assume none of -- you're not
16 asking me at any point -- if you are, I assume
17 I'll be telling you not, that I won't, or one
18 of the lawyers here will tell me not to.

19 But it was my understanding that
20 Lehman -- that Barclays -- let me step back a
21 second.

22 Even before the bankruptcy, even
23 before that Friday morning when -- the Friday
24 before the 15th, the 12th I guess when
25 Barclays had first retained us certainly, they

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1 -Lewkow-

2 may have gotten involved a little bit the day
3 before or something. But even before Barclays
4 had started thinking about, as far as I know,
5 Lehman, there had been stories in the press
6 about suggesting that Lehman had been slow to
7 revalue assets, and that they had inflated
8 values in their portfolio.

9 But beyond that in the very limited
10 time, as I understood it, that Barclays had
11 been provided with some information about the
12 portfolio that we were -- that Barclays was
13 being asked to -- that it be acquiring as part
14 of its acquisition of basically the entire
15 business with certain exceptions and the
16 assumption of very substantial certain
17 specified liabilities, when their people,
18 financial people, trading people, whoever it
19 was -- and I'm not sure I knew all the people
20 involved. It was a new client in the
21 United -- I don't know the name of all the
22 people who were going -- who were around and
23 in the different rooms that we were -- that
24 meetings were taking place on that Monday and
25 Tuesday up at Lehman Brothers on the -- on the
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1 -Lewkow-

2 big conference and dining floor.

3 But it was my understanding that
4 Barclays people had reviewed certain
5 information about the assets and liabilities
6 and had thought that the -- there were
7 large -- certain category types of assets and
8 the like that had, as last marked by Lehman,
9 were substantially overstated. Whether they
10 had been overstated as of the date they
11 originally been marked or were overstated
12 because of the passage of a couple of days, I
13 believe they would not have been marked for a
14 couple of days. It's my recollection. I
15 could be wrong on that.

16 But one way or another, or a
17 combination of the two, that the Barclays
18 people had concluded that the Lehman marks
19 were substantially overstated.

20 **Q. When was Cleary first retained in**
21 **connection with this transaction?**

22 A. We were retained on Friday. Not on
23 this transaction, we were retained on the
24 Friday before the bankruptcy on the 12th,
25 early that morning, to assist Barclays in

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1 -Lewkow-

2 looking at a potential much larger transaction
3 to buy not just a substantial part of the U.S.
4 and Canadian broker-dealer investment banking
5 business, but a much larger portion of Lehman
6 Brothers.

7 I don't know whether initially -- I
8 can't recall whether initially it might have
9 been all of Lehman. I think very early it
10 became clear it was not quite everything but
11 it was a larger universe than what we ended up
12 trying to do in doing, starting with the
13 Monday filing the Chapter 11.

14 **Q. In the interest of everyone's time,**
15 **we've taken a lot of depositions in this case.**
16 **Some time over the weekend, the concept of**
17 **that larger transaction came to an end, those**
18 **negotiations?**

19 A. Correct. Sunday around midday.

20 **Q. And around some point, negotiations**
21 **resumed with respect of the smaller**
22 **transaction that was ultimately concluded,**
23 **correct?**

24 A. I don't know if it matters. But I
25 would use the word "resume."

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-Lewkow-

Q. Okay.

A. As far as I can tell, they stopped on Sunday, people went home and saw their families. And I got a call Monday morning, "Well, can you come up to Lehman Brothers? We're going to see if we can do a deal. If they did file as they said they would" -- we thought they would -- "they filed in Chapter 11 and now want to see whether or not there's something we can do to purchase" -- you know, I don't remember how it was described to me in that initial call.

But, "Can you come up to Lehman Brothers?"

MR. MORAG: Mr. Lewkow, let me caution you on privilege. I think you just said the gist to the conversation, which is sufficient for these purposes.

Q. You came back?

A. I went up to Lehman Brothers.

Q. Let's just talk about the period when you came back. In the negotiations that began then, what steps, if any, were taken to accommodate Barclays' view that the Lehman

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-Lewkow-

Barclays, was my understanding, that Barclays' trading and/or financial folks had been provided certain information about the trading positions; that it was contemplated that Barclays would assume as part of an acquisition of the business of substantially all of the business.

And in the course of that, Barclays had -- Barclays people had reached the view that there were very significant -- that the aggregate carrying value that they had been furnished by Lehman was substantially higher than Barclays believed was appropriate that Monday or Tuesday.

Q. And by "aggregate carrying value", do you mean Lehman's book value?

A. It's my -- I'm not an accountant, as you know. I'm a lawyer. It is my understanding that for an entity such as Lehman, they are supposed to -- under regulatory accounting principles, maybe generally accepted accounting principles, I don't know. But as a general matter, broker-dealers mark their portfolio to market

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marks were substantially overstated, to use your term?

MR. MORAG: Objection. Vague.

A. Yeah. I guess -- I don't know what you mean by "accommodate." And the word -- you also used the word "the view." I think that view -- I did mention the newspaper.

MR. MORAG: I think we need a break.

(Whereupon, a recess was taken from 10:22 a.m. to 10:25 a.m.)

BY MR. GAFFEY:

Q. In the negotiations that took place in connection with the transaction that's brought us here today, Mr. Lewkow, were there discussions, to your knowledge, between the folks at Barclays and the folks at Lehman about Barclays' view that the assets of Lehman were overstated on its books?

MR. MORAG: Object to the form.

A. Yes. As to certain assets.

Q. Can you tell me what you know with regard to those discussions?

A. As I stated in my declaration,

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on a daily basis. And I believe that means their book value is effectively adjusted each day. To the extent that a balance sheet is prepared, the balance sheet is prepared based on those marks.

Q. So when you use the phrase "aggregate carrying value," were you referring to Lehman's books marked to market in that manner?

MR. MORAG: Object to the form.

MR. HUME: Objection, asked and answered.

A. I think I've got nothing more to say on that.

Q. What did you mean to say when you said "aggregate carrying value"?

A. The value -- what I hear people refer to as "the marks." What they were being marked at on the books of Lehman by Lehman.

Q. And in the negotiations of the transaction, were any steps taken to address Barclays' concern that the aggregate carrying value was substantially higher than it should have been?

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-Lewkow-

MR. HUME: Objection. Vague.

MR. MORAG: Objection. Asked and answered.

A. I have -- I've told you -- I have nothing to add to my answer.

Q. Well, I'm afraid that's not going to work, so I do need an answer to the question.

A. Your question asked in the negotiations. I don't -- I don't -- if you mean in the negotiations of the transaction, I think my answer would be no, as I have said in my declaration and in my statement.

Barclays was furnished information which led it to believe that Lehman's marks were not correct and overstated the value of assets, and was -- Barclays was not prepared to do a deal with -- where they were overstated marks on the Lehman books of large amounts.

Q. So if Barclays was not prepared to do a deal where there were overstatements on Lehman's books of large amounts, what did Barclays do to address that concern in order

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-Lewkow-

to conclude a transaction?

A. Barclays made -- made its position -- made its view of the marks, that they were overstated substantially, clear to Lehman people and urged -- my understanding, they urged Lehman to take a fresh look at the values that they were carrying them on on their books because it was at a crazy world, and it was something that Lehman should take a fresh look at to -- to both deal with the passage of time and information.

I don't know what -- you know, in my declaration, I mention an example that was mentioned in a broad public -- "public" is the wrong statement. With both sides present, including lawyers, including me -- of the example of a particular position where Barclays had a junior position of -- junior tranche position from the same issuer, same type of security, and was carrying it --

I'm sorry. Barclays had a senior position and was carrying it at a bigger discount to par than Lehman was carrying the junior position. And those are -- you know,

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-Lewkow-

I'm sure there were other examples. That was the one that was easy to explain to us lawyers as evidencing why Barclays believed Lehman needed to take a fresh look at what it -- how it was carrying certain portions of the portfolio on its books and whether or not they needed to revise their marks.

Q. Did the level at which Lehman was carrying its assets on the books affect the price which Barclays was willing to pay on the transaction?

MR. MORAG: Object to form.

A. I think it affected their willingness to do the deal. The price was what was in the Agreement where we acquired certain assets, acquired certain liabilities, agreed to make certain payments, assumed a certain level of obligations.

We were buying a business as a whole; the purchase price was the whole transaction. We were not -- no one from Barclays went into this to buy a portfolio; it was to buy substantially all the assets of a business.

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-Lewkow-

Q. Describe for me, if you would, the price that Barclays paid in that purchase.

A. At what time, sir?

Q. Good point. Describe for me the price that Barclays agreed to pay for that business on September 16, 2008?

MR. HUME: I'm going to just object to the extent that it calls for interpretation of the contract which he hasn't been shown.

(Discussion off the record.)

Q. I think the question on the table, Mr. Lewkow, is: Will you describe for me the price that Barclays agreed to pay for that business on September 16, 2008?

MR. MORAG: Objection. To the extent it calls for a legal interpretation of the contract. If you recall generally the terms.

A. Look, I think the contract is the contract. Without having it in front of me, I may omit certain things. But in general terms, my recollection is that under the Asset Purchase Agreement as signed late on the 16th

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1 -Lewkow-
2 or early on the 17th, I think it is dated the
3 16th, Barclays agreed to make payments. Some
4 were going to be based on appraised value of
5 certain specified real estate assets.

6 There was a -- they were also going
7 to pay another \$250 million. They were going
8 to, under the Asset Purchase Agreement, they
9 would pay, as I testified earlier, under
10 certain circumstances if they sold certain
11 portfolio assets within one year and netted a
12 profit as described in the Asset Purchase
13 Agreement, they would share some of that
14 profit with Lehman Brothers.

15 They were also taking on various
16 liabilities, including liabilities related to
17 the portfolio, part of the portfolio positions
18 that they were taking. They were agreeing to
19 pay certain cure costs, the amount of which --
20 whatever they turned out to be. And they also
21 were agreeing to pay certain compensation
22 amounts under the Asset Purchase Agreement.

23 I may be forgetting some things.
24 If I had the the Agreement in front of me, I'd
25 be happy to go through it and take another

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1 -Lewkow-
2 it involved money; cash.

3 And the original agreement, the
4 Asset Purchase Agreement, had a concept of
5 retained cash, if I remember the defined term,
6 which provided that that amount of cash would
7 be among the assets that Barclays would be
8 receiving as part of the acquisition. And
9 that was -- that was dropped subsequently from
10 the -- from the transaction.

11 **Q. Anything else that you remember in**
12 **terms of changes between the transaction, the**
13 **pricing provisions of the transaction on**
14 **September 16th, and the provisions as the deal**
15 **ultimately closed?**

16 MR. HUME: Objection to the extent
17 it calls for an interpretation of the
18 contract.

19 MR. MORAG: At this point, I'm
20 going to ask you to show it to him.

21 A. It would be helpful to see the
22 Clarification Letter to know that. Let me
23 just for one second.

24 Let me just... none that occurs to
25 me without looking at the contract.

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1 -Lewkow-
2 look.

3 **Q. I understand, sir, it is your**
4 **general recollection.**

5 **The deal, as it finally closed, did**
6 **it change the structure you just described?**

7 MR. MORAG: With respect to the
8 purchase price?

9 MR. GAFFEY: Yes.

10 A. Yes.

11 **Q. How did it change?**

12 A. It changed -- first of all, the
13 provision that required Barclays, under some
14 scenarios, to share some of the potential
15 profit on the -- if they sold within a year.
16 I think it was a year, it might have been six
17 months. If they sold within a fixed period
18 certain of the positions that they assumed
19 they made a profit, some portion of that would
20 go to Lehman Brothers.

21 That provision was dropped. So
22 that was a change in one of the price related
23 provisions. And -- I remember the other.

24 The other thing -- I don't know if
25 I would call it a price provision or not, but

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1 -Lewkow-

2 **Q. Let me show you what's previously**
3 **been marked as Deposition Exhibit 1, a copy of**
4 **the Asset Purchase Agreement.**

5 **Have you had a chance to review**
6 **this prior to your deposition today, reviewed**
7 **it recently?**

8 A. Yes.

9 **Q. Would you take a look at page 14 of**
10 **that exhibit, sir, Section 3.3 of the**
11 **Agreement.**

12 A. Yes.

13 **Q. That provision, "Adjustment to cash**
14 **amount," is that the provision you've been**
15 **talking about when you talked about potential**
16 **payments to Lehman depending on the values of**
17 **certain assets after a year?**

18 A. Let me just reread it.

19 **Q. Sure.**

20 MR. MORAG: Objection.

21 **Q. Don't take my explanation. But I**
22 **just want to know if that's the agreement,**
23 **that's the provision you've been talking**
24 **about?**

25 MR. MORAG: Object to the

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1 -Lewkow-
2 characterization of it, but you can
3 answer if that's the provision you were
4 referring to earlier.

5 (Witness reviewing document.)

6 A. Yes.

7 **Q. Now, having taken a look at**
8 **Section 3.3 of the Asset Purchase Agreement,**
9 **and directing your attention again to**
10 **Paragraph 4 of your Declaration, could you**
11 **tell me, sir, whether Section 3.3 is a**
12 **post-closing purchase price adjustment**
13 **provision relating to valuation of transferred**
14 **assets and liabilities, as you described it in**
15 **Paragraph 4?**

16 MR. HUME: Objection. Asked and
17 answered.

18 MR. MORAG: You can answer.

19 A. No, I don't think so.

20 **Q. Why not?**

21 A. Because if you were going to do it
22 based on a valuation, you would have valued
23 all of the -- those -- at least all of the
24 portfolio assets that are being -- all of the
25 positions, and it would turn not on whether or

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1 -Lewkow-

2 not Barclays in its complete discretion had or
3 had not sold some, if not others, of those
4 assets.

5 **Q. Do you know if a balance sheet of**
6 **any kind was prepared in connection with the**
7 **Asset Purchase Agreement?**

8 MR. MORAG: Object to the form.

9 A. I don't know whether I would
10 characterize it as a balance sheet. There was
11 a one-page piece of paper that somebody from
12 Lehman Brothers went into the room late in the
13 game, late in the -- you know, late that
14 Tuesday. I don't remember what time, that had
15 certain categories of assets other than
16 liabilities on the -- on the -- on it, that
17 was talked about previously and is referred to
18 in one place in the Asset Purchase Agreement.

19 **Q. Mr. Lewkow, I'm showing you what's**
20 **previously been marked as Exhibit 19.**

21 **Is that the one-page piece of paper**
22 **you just referred to?**

23 A. I recall that there was at least
24 two versions of this that came in. And I
25 think both were initialled by Berkenfeld, that

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1 -Lewkow-
2 came and went. So I'm not sure if this was --
3 I don't remember the dating and the time of
4 it.

5 So whether this was the first or
6 the second or some other version, I can't
7 tell. But it looked generally like this, yes.

8 **Q. Whether this is the particular one**
9 **you are referring to, it is a version of**
10 **Exhibit 19 that you were referring to; is that**
11 **correct?**

12 MR. MORAG: Object to the form.

13 A. It is what I just said. It looks,
14 in general terms, like what I am referring to.

15 **Q. Have you seen this document before?**

16 A. I believe so. Again, I don't
17 remember all the numbers on the page, and so I
18 don't know whether -- which version this was.

19 But certainly I have -- I believe I
20 have seen this document at least recently.
21 Whether I saw this version that night, I have
22 less certainty.

23 **Q. Do you know why Mr. Berkenfeld**
24 **signed the one-page piece of paper that you**
25 **mentioned?**

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1 -Lewkow-

2 MR. MORAG: Objection. He's --

3 MR. HUME: Objection. Calls for
4 speculation.

5 A. I can tell you what I recall him
6 saying.

7 **Q. Okay.**

8 A. I think he said something like --
9 the Asset Purchase Agreement had been
10 substantially finalized, and he had come into
11 the room with this piece of paper or a version
12 of this piece of paper, and there was some
13 talk about -- that I don't remember very well,
14 about the categories of assets and liabilities
15 on this piece of paper.

16 And he said, "Well, this is what
17 we're talking about here. I'm going to
18 initial it," or something like that.

19 **Q. Did you ask him why he did that?**
20 **Why he said "This is what we're talking about,**
21 **I'm going to initial it"?**

22 A. No.

23 **Q. Did the one-page piece of paper**
24 **that Mr. Berkenfeld initialled play any role**
25 **in the transaction?**

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<p>1 -Lewkow-</p> <p>2 MR. MORAG: Objection to form.</p> <p>3 MR. HUME: Objection. Vague.</p> <p>4 A. As I mentioned, there is a</p> <p>5 provision in the compensation section that</p> <p>6 refers to this piece of paper or some version</p> <p>7 of it, yes.</p> <p>8 Q. Was it your understanding that the</p> <p>9 one-page piece of paper Mr. Berkenfeld signed</p> <p>10 also guided the transaction to the extent the</p> <p>11 value of portfolio of assets was concerned?</p> <p>12 MR. MORAG: Mr. Gaffey, I'm going</p> <p>13 to object. You keep using the word</p> <p>14 "signed," he keeps using the word</p> <p>15 "initialled."</p> <p>16 MR. GAFFEY: We are big boys. We</p> <p>17 both know it means he wrote on the</p> <p>18 document. Do you want me to say</p> <p>19 "initialled"?</p> <p>20 MR. MORAG: If you could.</p> <p>21 MR. GAFFEY: Sure. Can you read</p> <p>22 the question back?</p> <p>23 (Record read as follows:</p> <p>24 "Question: Was it your understanding</p> <p>25 that the one-page piece of paper</p> <p>TSG Reporting - Worldwide 877-702-9580</p>	<p>1 -Lewkow-</p> <p>2 Mr. Berkenfeld signed also guided the</p> <p>3 transaction to the extent the value of</p> <p>4 portfolio of assets was concerned?"</p> <p>5 Q. Can you answer that question as if</p> <p>6 I said "initialled"?</p> <p>7 A. I need to hear it again. I'm</p> <p>8 sorry.</p> <p>9 Q. Let me rephrase it.</p> <p>10 The one-page piece of paper that</p> <p>11 Mr. Berkenfeld initialled, what role, if any,</p> <p>12 did that play in the transaction? Withdrawn.</p> <p>13 Did the one-page piece of paper</p> <p>14 that Mr. Berkenfeld initialled guide the</p> <p>15 transaction with regard to the value of the</p> <p>16 portfolio of assets transferred?</p> <p>17 MR. MORAG: Object to the form.</p> <p>18 A. I would not -- I don't know what</p> <p>19 you mean by "guide."</p> <p>20 Q. Was it meant to instruct the drafts</p> <p>21 people of the Asset Purchase Agreement as to</p> <p>22 the value of the long position that was</p> <p>23 transferred?</p> <p>24 A. The drafts people had already</p> <p>25 drafted the Agreement. I don't remember</p> <p>TSG Reporting - Worldwide 877-702-9580</p>
Page 36	Page 37
<p>1 -Lewkow-</p> <p>2 exactly what the status was at the precise</p> <p>3 time. This was brought in. I don't think it</p> <p>4 influenced the drafting. If by the draftsmen</p> <p>5 you mean the lawyers from both sides who were</p> <p>6 involved in preparation of the document, the</p> <p>7 Asset Purchase Agreement, I don't believe this</p> <p>8 guided the drafting of the Agreement, no.</p> <p>9 Q. Did anyone from Cleary Gottlieb</p> <p>10 play any role in the preparation of this</p> <p>11 document?</p> <p>12 A. No. To the best of my knowledge,</p> <p>13 no.</p> <p>14 Q. Did anyone from Cleary Gottlieb</p> <p>15 play any role in determining the values that</p> <p>16 are shown on this document?</p> <p>17 A. No.</p> <p>18 Q. Did anyone from Barclays</p> <p>19 participate in the preparation of this</p> <p>20 document?</p> <p>21 A. I don't believe, not to my</p> <p>22 knowledge.</p> <p>23 Q. Did anyone from Barclays play any</p> <p>24 role in determining the values shown on this</p> <p>25 document?</p> <p>TSG Reporting - Worldwide 877-702-9580</p>	<p>1 -Lewkow-</p> <p>2 A. I don't -- I don't know what that</p> <p>3 means. Other than as I testified previously</p> <p>4 and is set forth in my declaration, you can</p> <p>5 characterize that in any way you want. But</p> <p>6 other than that, I don't know of anything</p> <p>7 relative to the question.</p> <p>8 Q. Would you take a look at</p> <p>9 Paragraph 9 of your Declaration?</p> <p>10 A. Sure.</p> <p>11 Q. Take the time you need to review</p> <p>12 the paragraph to refresh yourself of its</p> <p>13 contents.</p> <p>14 But my question is going to go to</p> <p>15 the portion that begins -- seven lines down --</p> <p>16 "While I was not present for the actual</p> <p>17 discussions between Barclays and Lehman</p> <p>18 Brothers traders..."</p> <p>19 A. Let me just reread it.</p> <p>20 Q. Sure.</p> <p>21 (Witness reviewing document.)</p> <p>22 A. Yes?</p> <p>23 Q. Now, to your knowledge, was the</p> <p>24 document I have before you marked as</p> <p>25 Exhibit 19, a product of the discussions</p> <p>TSG Reporting - Worldwide 877-702-9580</p>

1 **-Lewkow-**
2 **between Barclays and Lehman traders that**
3 **you're referring to in Paragraph 9 of your**
4 **Declaration?**

5 MR. MORAG: Object to the form.

6 A. No. I -- I wouldn't -- I mean,
7 I -- this was a Lehman Brothers document. I
8 assume that as --

9 To the extent that Lehman Brothers,
10 having listened to Barclays' views as to
11 valuation may have changed their marks, as I
12 believe they did, it may have reflected those
13 judgments by Lehman as to the proper marking
14 of assets or liabilities. But that's all.

15 **Q. Did you come to an understanding**
16 **that Lehman changed its marks in response to**
17 **Barclays' expression of concern that they were**
18 **too high?**

19 A. It was my understanding that they
20 had determined that they would change their
21 marks.

22 MR. MORAG: By that, who are you
23 referring to?

24 THE WITNESS: Lehman. The only one
25 that was making marks was Lehman. It
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1 **-Lewkow-**
2 was their balance sheet.

3 **Q. From whom did you obtain that**
4 **understanding? Can I just caution you, if it**
5 **is a Barclays person, just tell me their name?**
6 **I don't want to know the substance of the**
7 **conversation.**

8 A. No, I understand that.

9 **Q. Yes.**

10 A. I don't remember the name. I have
11 a recollection of someone being involved in
12 those discussions coming into the room. I
13 believe it was -- where lawyers and other
14 folks from the other side were in the room and
15 reported what I had characterized in my
16 testimony a minute or two ago. But I don't
17 remember the name of the individual from
18 Barclays.

19 **Q. Do you know if Lehman did, in fact,**
20 **change its marks?**

21 A. I have no way of knowing that.

22 **Q. Did you or anyone else from Cleary**
23 **ever ask that question in the week**
24 **beginning -- well, from Tuesday, September**
25 **16th through the closing of the transaction on**
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1 **-Lewkow-**
2 **the 22nd?**
3 A. No.
4 **Q. Actually, will you turn to, in the**
5 **Asset Purchase Agreement, which is Exhibit 1.**
6 **If I can ask you, please, Mr. Lewkow, to turn**
7 **to page 6, which contains the definition of**
8 **"Purchased Assets."**

9 **And in particular, if you would**
10 **take a look at subsection (d) of that**
11 **definition.**

12 A. Yup.

13 **Q. Do you see there's a reference**
14 **there to various categories of securities.**
15 **Let met read it. "Government securities,**
16 **commercial paper, corporate debt, corporate**
17 **equity, exchange-traded derivatives and**
18 **collateralized short-term agreements with a**
19 **book value as of the date hereof of**
20 **approximately \$70 billion (collectively 'long**
21 **positions')." Do you see that?**

22 A. I do.

23 **Q. Where did the \$70 billion come from**
24 **that was put into subsection (d) of the**
25 **definition of "Purchased Assets"?**

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1 **-Lewkow-**
2 A. From Lehman.
3 **Q. Was it Barclays' understanding at**
4 **the time that that was an accurate estimation**
5 **of the book value of the described assets?**

6 MR. MORAG: Objection to form.

7 A. To my knowledge, it was Barclays'
8 understanding that it represented what Lehman
9 Brothers -- having considered the discussions
10 I described earlier in terms of what they
11 concluded, after hearing Barclays, was the
12 proper mark to take on its balance sheet.
13 That it reflected Lehman's conclusions.

14 **Q. Was the term "book value" used for**
15 **a reason in subsection (d) in the definition**
16 **of "Purchased Assets"?**

17 MR. HUME: Objection. Vague.

18 A. Who's -- yeah, whose reason?

19 **Q. Well, was it supposed to say**
20 **"market value"?**

21 A. Not all assets on the balance sheet
22 have a market value. There are -- it is my
23 understanding. Again, I'm not an expert, a
24 broker-dealer expert or a market expert or a
25 valuation expert, but it is my understanding

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1 -Lewkow-
2 that for some positions where there is no
3 active market, that other -- other things go
4 into how a broker-dealer is supposed to mark
5 their -- their valuation from an accounting
6 standpoint.

7 **Q. Was it a considered choice of the**
8 **people who drafted the Asset Purchase**
9 **Agreement to use the phrase "book value"**
10 **instead of some other phrase such as "market**
11 **value"?**

12 MR. HUME: Objection. Vague and
13 lacks foundation.

14 A. Can I have the question read back,
15 please?

16 (Record read.)

17 A. I don't know how to answer that
18 question, final question.

19 Every -- we tried as a group, Weil
20 Gotshal, Simpson Thacher, Sullivan & Cromwell,
21 Cleary Gottlieb, tried to do the best we could
22 in drafting this Agreement under
23 extraordinarily unusual, difficult
24 circumstances.

25 I do recall that, that this was one
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1 -Lewkow-
2 least from what this lawyer believed, the
3 lawyer from Weil, understood "book value" to
4 mean in the context of financial assets held
5 by a broker-dealer.

6 **Q. Did anyone from the Barclays side**
7 **of the table -- by that I'm including Barclays**
8 **personnel or Cleary, ask for or get any**
9 **information to indicate whether the value of**
10 **\$70 billion described in subsection (d) was an**
11 **accurate description of Lehman's book value**
12 **for those classes of securities?**

13 MR. MORAG: Object to the form.

14 A. As I told you, as I believe I
15 testified, I believe we were in a group told
16 that Lehman was going to remark certain
17 portfolio assets to reduce them. I assumed
18 that Lehman had done -- it never occurred to
19 me, when they talked about "marks", I assumed
20 that it reflected whatever Lehman had,
21 therefore, done. And therefore, book value
22 likewise.

23 **Q. So from what we talked about so**
24 **far, would it be fair to say that the**
25 **understanding was that Lehman negotiated to**

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1 -Lewkow-
2 of those final changes that was added in
3 handwriting, if I had the other version of the
4 Agreement. And somebody, I believe on
5 Lehman's side of the table said, suggested we
6 add in words such as -- to categorize that
7 what we were talking about were, you know, a
8 disfunction of assets. And it was for that
9 purpose that it was referenced.

10 And I believe that it was first
11 suggested -- and again, I don't know from
12 whom, it might have been a Lehman person. It
13 might have been one of their lawyers. Said,
14 let's say, with a -- you know, with a
15 marking -- with marks of 70 billion, or some
16 words of that sort.

17 And some lawyer -- again, I don't
18 know on which side. Because this was all
19 being done in group session issue -- said,
20 "Well, should we use the word" -- "from a
21 legal, instead of saying 'marks', should we
22 use the word 'book value'?"

23 And that's the word that went in.
24 But I don't think people were trying to draw a
25 distinction between book value and marks, at
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1 -Lewkow-
2 **reduce its marks?**

3 MR. MORAG: Object to the form.

4 A. I'm not going to characterize. I
5 have -- you're trying to characterize what I
6 testified to. I stand by the accuracy of my
7 testimony. But I would not -- I would not --
8 I would not call that "negotiated." It is
9 what it is.

10 **Q. Mr. Lewkow, don't get me wrong.**
11 **I'm not suggesting any lack of credibility of**
12 **your testimony. What I'm looking for is your**
13 **best memory of what people talked about at the**
14 **time?**

15 A. I've given you my best.

16 **Q. Do you remember anything else in**
17 **terms of discussions concerning the use of the**
18 **phrase "book value" in subsection (d)?**

19 A. No.

20 **Q. Let me show you what's previously**
21 **been marked as Exhibit 518. Take a look at**
22 **the document. My questions will go to the**
23 **notations on page 7.**

24 MR. HUME: Page which?

25 MR. MORAG: 7. Of the document

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-Lewkow-

itself, not the Bates number.

A. Yup?

Q. And you referred a few moments ago, Mr. Lewkow, to the addition of the phrase "book value" in a handwritten note, in a handwritten annotation. Is this the document that you were remembering?

A. It appears to be, yes.

Q. At least I wasn't clear as to whether you have a memory as to which side of the negotiations added that phrase. Do you recall whether it was Lehman or Barclays, or do you not recall either side?

A. As I testified, it was a suggestion of someone on the Lehman side that words of that nature be added, yes.

Q. Do you recall who on the Lehman side?

A. No. I believe it was not one of their outside lawyers. I believe it was somebody from Lehman itself, but I have no recollection who.

Q. If you can turn back. Actually, I created kind of a document mess in front of

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-Lewkow-

you.

A. It is all right.

Q. Why don't you fold those up? And let go back to your Declaration for a minute.

A. Sure.

(Witness complying.)

Q. Actually, just before we go back to your Declaration?

MR. GAFFEY: Bridgett, can I have 25, please?

Q. Mr. Lewkow, I put before you a copy of what previously has been marked as Exhibit 25.

You referred a few moments ago to a Clarification Letter. Is that the Clarification Letter to which you were referring?

A. Yes. It appears to be.

Q. What was the purpose of the Clarification Letter?

A. The Clarification Letter was, as set forth in the opening paragraph, "To clarify the intent of the parties with respect to certain provisions of the Asset Purchase

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-Lewkow-

Agreement, supplement in certain respects the agreements of the parties stated therein, and amend the Asset Purchase Agreement in certain respects."

Q. Now, are there particular portions of the Agreement that were amended or are there particular portions that were supplemented or are there particular portions that were clarified?

MR. MORAG: Objection to the form.

MR. HUME: Objection to the form and that it calls for an intersection of the agreement. And generally Barclays will object to the extent you ask the witness to give legal interpretations of the contract as revealing privilege.

A. The answer is -- the document is the document. No one ever tried to say, all right, this clause is a supplement; this clause is an amendment; this clause is -- they are what they are. Certain -- certain things did clarify; certain things amended. No one -- there was no reason -- there was no

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-Lewkow-

effort to allocate into buckets in this document.

Q. Do you recall if the use of the word "amend" was a deliberate drafting choice?

MR. MORAG: Objection.

MR. GAFFEY: That's a bad question.

Let me withdraw that question.

Q. Do you recall if the word "amend" was added at some point during exchanging drafts of the Clarification Letter?

A. I would need to see all the drafts to be sure. But my recollection is yes.

Q. Okay. I'm going to show you the draft, so I'm not going to ask you to speculate and pinpoint.

Do you recall any discussions between the party, that is between Lehman and Barclays or their representatives, about adding the word "amend" to the Clarification Letter?

A. I have a vague recollection that with the very first draft of the Clarification Letter, which was prepared very quickly by someone -- and I don't know which side --

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1 -Lewkow-
2 after the Asset Purchase Agreement had been
3 signed and filed with the Court on Wednesday
4 morning, that the original first draft was a
5 page or two and it clearly was truly nothing
6 other than clarification. And so that the
7 first draft did not use the word "amendment."

8 At some later point, as things got
9 more complicated and things were happening, it
10 became -- there was discussion that we should
11 add the word "amend." That is my
12 understanding.

13 **Q. Do you recall who was involved in**
14 **those discussions?**

15 A. People from Cleary Gottlieb and
16 people from Weil Gotshal, and probably Simpson
17 Thacher.

18 **Q. Do you have a more specific memory**
19 **of which people? I know it was a pretty**
20 **tumultuous week. But do you recall who in**
21 **particular was involved in those discussions?**

22 A. It was more in the direct
23 conversations between -- I think most of the
24 conversations on the Clarification Letter were
25 on Barclays side between some combination,

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1 -Lewkow-
2 Duane McLaughlin, David Leinwand; Robert
3 Davis; some cases me, but not primarily me;
4 and various people from Weil Gotshal which I
5 believe included Robert Messineo, I may be
6 mispronouncing his name, David Murgio, maybe
7 Tom Roberts and I'm not sure who else.

8 **Q. Do you know if Harvey Miller was**
9 **involved in those discussions?**

10 A. Which discussions? You started --
11 I probably went too far in answering your
12 question.

13 **Q. I don't know who led who astray**
14 **there.**

15 **The question, the issue is what you**
16 **talked about a minute ago --**

17 A. The word "amendment"?

18 **Q. Yes. That it became more complex**
19 **and I decided to add the word "amendment,"**
20 **whether Mr. Harvey Miller was involved in**
21 **those discussions.**

22 A. I don't think -- I don't know what
23 Mr. Miller was doing talking internally with
24 his colleagues or with his clients. Did he
25 participate in the exact wording of that? I

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1 -Lewkow-
2 don't know. I do have a distinct recollection
3 of him describing to the Court at the sale
4 hearing that Friday evening that there were
5 major changes in the deal.

6 So I can't imagine -- I don't want
7 to speculate. I do not recall specifically
8 whether he was involved in adding the word
9 "amend" in that clause.

10 **Q. Was the Clarification Letter meant**
11 **to memorialize those major changes in the**
12 **deal?**

13 MR. MORAG: Object to form.

14 A. I'm picking up the Clarification
15 Letter. It was made to both supplement,
16 clarify and amend the Asset Purchase
17 Agreement. And it was intended to be
18 consistent with what the Court had been told
19 this Friday evening.

20 **Q. Were you yourself present in court**
21 **on the sale hearing on the 19th?**

22 A. I was.

23 MR. MORAG: Yes.

24 MR. GAFFEY: Yes. Okay.

25 **Q. The Clarification Letter,**

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1 -Lewkow-
2 **Exhibit 25, sets forth certain changes in the**
3 **definition of "Purchased Assets" from the**
4 **original Asset Purchase Agreement; is that**
5 **correct?**

6 MR. HUME: Object to the form.

7 A. Can I look at --

8 **Q. Sure.**

9 A. -- both at the Clarification Letter
10 and the Asset Purchase Agreement?

11 **Q. Look at whatever you need to look**
12 **at.**

13 A. Thank you.

14 (Witness reviewing document.)

15 A. Yes.

16 **Q. While you were present in court,**
17 **was Judge Peck told about the changes in the**
18 **definition of "Purchased Assets"?**

19 MR. MORAG: Object to the form.

20 A. You can read the transcript as well
21 as I can, and I think it speaks for itself.

22 I think that what the judge was
23 told was about the substantive changes in the
24 deal, major changes in the deal that had been
25 orally agreed to, is my understanding, by

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<p>1 -Lewkow-</p> <p>2 representatives of Lehman and Barclays in a</p> <p>3 couple of hours preceding the beginning of the</p> <p>4 court hearing.</p> <p>5 So it does not mean that -- as the</p> <p>6 Court was well aware and as the Court noted,</p> <p>7 that he did not have the document. The</p> <p>8 document did not yet exist but, you know,</p> <p>9 major changes were described by Mr. Miller and</p> <p>10 Ms. Fife to the Court.</p> <p>11 Q. And in Cleary Gottlieb's view at</p> <p>12 the time, were the changes as described by</p> <p>13 Mr. Miller and Ms. Fife to the Court at the</p> <p>14 hearing, accurate and complete?</p> <p>15 MR. MORAG: Object to the form.</p> <p>16 A. Yes.</p> <p>17 Q. Were any changes to the transaction</p> <p>18 discussed or agreed upon after the sale had</p> <p>19 been concluded, that were incorporated in the</p> <p>20 Clarification Letter?</p> <p>21 MR. MORAG: Object to the form.</p> <p>22 A. Well, one -- one thing that was</p> <p>23 changed that I recall related to the</p> <p>24 residential mortgages, the so-called RESIs.</p> <p>25 The original Asset Purchase</p> <p>TSG Reporting - Worldwide 877-702-9580</p>	<p>1 -Lewkow-</p> <p>2 Agreement had -- contained a provision that</p> <p>3 treated the residential mortgages differently</p> <p>4 than any other category of assets and</p> <p>5 provided -- can I look at the Agreement?</p> <p>6 Q. Sure. I think you might be looking</p> <p>7 for 1(e) in the definition of "Purchased</p> <p>8 Assets"?</p> <p>9 A. He knows where all the clauses are</p> <p>10 here.</p> <p>11 Q. Page 6.</p> <p>12 (Witness reviewing document.)</p> <p>13 A. Right. So the original Asset</p> <p>14 Purchase Agreement provided that the Purchased</p> <p>15 Assets that Barclays would be acquiring</p> <p>16 included a 50 percent interest in the</p> <p>17 positions in the residential mortgage</p> <p>18 securities.</p> <p>19 At some point on Thursday, late</p> <p>20 Thursday or early Friday -- I have no</p> <p>21 recollection of when it was precisely -- an</p> <p>22 amendment No. 1 to the Asset Purchase</p> <p>23 Agreement was executed by the parties that was</p> <p>24 addressed -- was done to address a problem.</p> <p>25 There was real uncertainty as to</p> <p>TSG Reporting - Worldwide 877-702-9580</p>
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<p>1 -Lewkow-</p> <p>2 whether the deal could be completed because of</p> <p>3 issues that DTC wanted assurances that it was</p> <p>4 being -- it would be protected in certain</p> <p>5 respects, the details of which I have -- was</p> <p>6 not involved in, and that I don't recall great</p> <p>7 detail.</p> <p>8 But the amendment instead provided</p> <p>9 that the 50 percent interest that Lehman was</p> <p>10 going to keep, as I recall, was instead going</p> <p>11 to be delivered -- and I don't remember the --</p> <p>12 I have to look at amendment No. 1, but it was</p> <p>13 going to be delivered instead to DTC. And if</p> <p>14 at the end of some period and the like it</p> <p>15 turned out that to secure up to, I believe,</p> <p>16 250 million. But again, I would need to look</p> <p>17 at amendment No. 1.</p> <p>18 But that to the extent that there</p> <p>19 was some excess available, it would go back to</p> <p>20 Lehman. So that Lehman still might end up</p> <p>21 having some interest in the RESIs to the</p> <p>22 extent that DTC did not need them to protect</p> <p>23 it in connection with the Lehman positions.</p> <p>24 The Court was, as I recall in the</p> <p>25 court hearing, Mr. Miller and Ms. Fife made</p> <p>TSG Reporting - Worldwide 877-702-9580</p>	<p>1 -Lewkow-</p> <p>2 reference to this provision.</p> <p>3 It turned out that the parties</p> <p>4 learned at some point, Friday or Saturday, I</p> <p>5 believe, that, in fact, the so-called</p> <p>6 residential real estate mortgage securities or</p> <p>7 RESIs, that Lehman didn't have such positions</p> <p>8 available to transfer to Barclays in the first</p> <p>9 place. So there were no such -- and the</p> <p>10 reasons were -- and I really don't recall. I</p> <p>11 don't know if I ever knew in detail.</p> <p>12 Some of those positions had already</p> <p>13 been traded; they no longer owned them; some,</p> <p>14 they may have been pledged to third parties;</p> <p>15 some would have involved, to the extent there</p> <p>16 were separate double counting with other</p> <p>17 securities that were getting outside this</p> <p>18 provision. And accordingly, there were no</p> <p>19 RESIs of the sort that the Court had been told</p> <p>20 about by Mr. Miller or Ms. Fife in the sale</p> <p>21 hearing. So that provision was eliminated in</p> <p>22 the Clarification Letter which basically</p> <p>23 amended the agreement to unwind amendment No.</p> <p>24 1.</p> <p>25 Q. Just so I'm clear we don't have a</p> <p>TSG Reporting - Worldwide 877-702-9580</p>

1 **-Lewkow-**
2 **disconnect between my question and your**
3 **answer. My question went to changes that were**
4 **made after the sale hearing ended.**

5 **Was that a change that was made**
6 **after the sale hearing ended?**

7 A. I believe so. Because as I said,
8 as I testified, Ms. Fife or Mr. Miller had
9 said, had described the state of the Asset
10 Purchase Agreement as amended by amendment No.
11 1 in the sale hearing. And this Clarification
12 Letter had the provisions that I just
13 described and for the reasons I described.

14 MR. MORAG: I need a bathroom break
15 if that's --

16 MR. GAFFEY: I can't hear you.

17 MR. MORAG: Bathroom break.

18 MR. GAFFEY: Perfect time.

19 (Whereupon, a short recess was
20 taken from 11:22 a.m. to 11:35 a.m.)

21 BY MR. GAFFEY:

22 **Q. Mr. Lewkow, I put in the top of the**
23 **other pile of documents you have in front of**
24 **you what we previously marked as Exhibit 24,**
25 **First Amendment to the Asset Purchase**

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1 **-Lewkow-**
2 Asset Purchase Agreement and at the time of
3 amendment No. 1 and at the time Weil Gotshal
4 described the transaction, changes to the
5 transaction that had been made. And when they
6 described that to the Court, they had believed
7 and Barclays had believed that there was a
8 separate pool available of residential
9 mortgages that over and above other assets
10 Barclays was getting would -- 50 percent of
11 the value of which would be something Barclays
12 was getting.

13 That was what the Court was told.
14 It turned out there weren't any separately
15 identifiable residential assets, residential
16 mortgage asset, RESIs. And so that -- that
17 was a change to reflect the fact that Barclays
18 was not getting something that it had
19 bargained for. But I don't know what you mean
20 by changes after the sale hearing.

21 **Q. Were there any other changes made**
22 **to reflect facets of the deal that were**
23 **different from what the Court had been told,**
24 **apart from this issue you told me about the**
25 **RESIs?**

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1 **-Lewkow-**
2 **Agreement.**

3 **Is that the first amendment you**
4 **were referring to before the break?**

5 A. Yes, it is.

6 **Q. And that was superceded by the**
7 **Clarification Letter?**

8 A. Yes.

9 **Q. Were there any other changes to the**
10 **transaction made after the conclusion of the**
11 **sale hearing that are reflected in the**
12 **Clarification Letter?**

13 MR. MORAG: Object to the form.

14 A. The Clarification Letter was not --
15 I can't deal with words like "after".

16 The Clarification Letter didn't
17 exist at the time of the court hearing. The
18 Clarification Letter did what it did; trying
19 to implement what the Court had been told as
20 well as the clarifications that needed to be
21 made.

22 And the example I gave you before
23 was different from what the Court had been
24 told to the disadvantage, I might add, to
25 Barclays because we had at the time of the
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1 **-Lewkow-**
2 MR. MORAG: Objection to form. The
3 feed is not coming through.

4 (Discussion off the record.)

5 (Record read as follows:

6 "Question: Were there any other
7 changes made to reflect facets of the
8 deal that were different from what the
9 Court had been told, apart from this
10 issue you told me about the RESIs?")

11 MR. MORAG: Object to the form.

12 A. I'm struggling. I'm not sure I can
13 answer it. Can I hear it one more time?

14 (Record read as follows:

15 "Question: Were there any other
16 changes made to reflect facets of the
17 deal that were different from what the
18 Court had been told, apart from this
19 issue you told me about the RESIs.")

20 A. Do I recall any changes to the deal
21 as they -- other than as I testified, any
22 changes to the deal that were -- from what the
23 Court, the totality of what the Court had been
24 told about the deal as a result of both the
25 Asset Purchase Agreement, the presentations,
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1 -Lewkow-
2 the Wednesday hearing and the Friday hearing,
3 I don't recall any changes to the deal after
4 that, you know, at this -- at this -- at this
5 time.

6 **Q. Take a look, if you would,**
7 **Mr. Lewkow at Paragraph 1, and tell me if**
8 **there are changes to the definition of**
9 **"Purchased Assets" affected by the**
10 **Clarification Letter, changes to the**
11 **definition from the Asset Purchase Agreement?**

12 MR. MORAG: You're asking him --

13 A. Yes.

14 MR. MORAG: -- the Clarification
15 Letter?

16 A. Yes.

17 MR. MORAG: The last thing --

18 A. The answer is yes. There was a
19 change in the definition, that's correct.

20 **Q. Do you know if the change in the**
21 **definition of "Purchased Assets" was brought**
22 **to the Court's attention?**

23 A. There was --

24 MR. MORAG: Object to the form.

25 A. The Court was told about the

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1 -Lewkow-
2 substance of the deal. The Court was not told
3 about clause, actual clause Y or clause Z and
4 the like. So I can't answer that question
5 other than to say, you know, you can read the
6 transcript and I do not believe the words
7 anyone said, and so such and such a clause or
8 such and such a definition will be
9 appropriately changed. That's not the way the
10 hearing went.

11 **Q. So, for example, no one, to your**
12 **knowledge, told the Court that the definition**
13 **of "Purchased Assets" would be changed to now**
14 **include securities owned by LBI and**
15 **transferred to Purchaser or its affiliates**
16 **under the Barclays Repurchase Agreement? I'm**
17 **referring to Paragraph 1A, subsection (ii).**

18 MR. MORAG: Objection to form.

19 A. To the extent that -- a couple of
20 things. First of all, that was not -- I do
21 not believe that was a change in the deal.
22 Barclays had agreed, with certain specified
23 exception, to acquire all of the assets used
24 in the business. Who financed those assets at
25 a given point in time I don't think is

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1 -Lewkow-
2 relevant to that question.
3 At the time the Asset Purchase
4 Agreement was signed, it's my understanding
5 that, you know, a lot of the assets were in
6 the form -- were being financed overnight by
7 the Federal Reserve pursuant to a repo.

8 At some point, Thursday or the
9 like, Barclays had taken the fed out of the
10 repo and provided the financing. But it was
11 the same -- or it should have been, if the
12 assets had been there as had been thought.
13 But those assets, the fact that we added a
14 reference to "repo" doesn't change whether the
15 substance of the transaction changed.

16 **Q. Was there a reason that that**
17 **particular phrase was added to the**
18 **Clarification Letter then?**

19 MR. MORAG: Objection. What
20 particular phrase?

21 A. I think you're going to have to be
22 more specific.

23 **Q. Well, was there discussion back and**
24 **forth between the parties about putting that**
25 **language in the Clarification Letter,**

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1 -Lewkow-
2 **referring to the repo assets?**

3 A. Can you point me to the exact
4 language, please?

5 **Q. Paragraph 1(a)(ii)(A), "The**
6 **securities owned by LBI and transferred to**
7 **Purchaser or its affiliates under the Barclays**
8 **Repurchase Agreement, as defined below, as**
9 **specified on Schedule A previously delivered**
10 **by Seller and accepted by Purchaser." That**
11 **language.**

12 A. There were, as you know, a number
13 of drafts that were circulated of the
14 Clarification Letter. And my recollection is
15 that at some point, as lawyers working on the
16 Clarification Letter first learned and then
17 focused on the fact that a lot, most but not
18 all of the assets had been in the -- referred
19 to in the definition of, I believe, "Long
20 positions" in the Asset Purchase Agreement,
21 were now -- had been financed by Barclays at
22 the Feds' request and were in the repo, some
23 lawyer -- and I don't remember whether it was
24 initially from Weil Gotshal or Cleary
25 Gottlieb, but there was agreement that it made

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1 -Lewkow-

2 sense to refer to the repo in this context.

3 **Q. Do you recall when it was that the**
4 **lawyers first learned that assets that had**
5 **been originally described in the long**
6 **positions were, in fact, in the repo? When**
7 **did that happen?**

8 MR. MORAG: Object to the form.

9 A. Yeah, I think -- first of all, I
10 can't answer for all lawyers. That would
11 include the Weil Gotshal lawyers and other
12 lawyers on behalf of...

13 As to Cleary Gottlieb, at some
14 point I believe, at least one of my colleagues
15 that Thursday had heard that there had been --
16 that Barclays had extend -- provided repo
17 financing to Barclays. I'm not sure. It is
18 my understanding none of the details, we had
19 not been involved in that at all. But it was
20 mentioned, and we learned more about it on
21 Friday and over the weekend.

22 But even as -- even as of the Court
23 hearing we knew very little about it.

24 **Q. Did there come a time when you**
25 **learned that the Repurchase Agreement had been**

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1 -Lewkow-

2 extent it would reveal a privilege from
3 Barclays.

4 MR. GAFFEY: As to when?

5 MR. HUME: Well, you assumed
6 when --

7 MR. GAFFEY: It is attorney --

8 MR. HUME: It was terminated. What
9 does terminated mean?

10 MR. GAFFEY: It means ended.

11 A. It's a legal... If you want to ask
12 the question -- can I talk to counsel for
13 Barclays and my counsel?

14 **Q. Sure. Absolutely.**

15 **(Whereupon, a recess was taken**
16 **from 11:49 a.m. to 11:52 a.m.)**

17 A. Before the break you asked me a
18 question about did there come a time of
19 learning about the termination of the repo.

20 Of course, the repo did terminate,
21 as I understand it, when we closed on Monday,
22 but I assume that's not what you're asking.

23 **Q. It is not.**

24 A. There did come a time over the
25 weekend, I don't recall whether it was

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1 -Lewkow-

2 **terminated by Barclays?**

3 MR. MORAG: Object to the form.

4 A. There came a time when I learned --
5 when I -- when I learned that -- I'm not sure
6 how I can answer, whether I can answer this
7 without talking about a privileged
8 conversation. Can I have...

9 **Q. Absolutely. Just before you talk**
10 **to your lawyers, I'm focusing on the timing**
11 **here. When did you learn it? We will tread**
12 **carefully so that --**

13 A. When did I learn it requires -- I
14 have to deal with your characterization. Can
15 I hear the question again?

16 **Q. Let me put a question, and then if**
17 **you need to consult, you can do that.**

18 A. Sure.

19 **Q. The question is: Did there come a**
20 **time when you learned that the Repurchase**
21 **Agreement had been terminated by Barclays?**

22 A. There came --

23 MR. MORAG: Objection to form.

24 MR. HUME: I will object and
25 instruct you not to answer to the

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1 -Lewkow-

2 Saturday or Sunday, where we did learn -- I
3 think I was reminded in preparing for the
4 deposition, that it was -- we initially
5 learned it when we were copied, or not copied
6 and then forwarded on an e-mail from Sullivan
7 & Cromwell who was co-counsel with us for
8 Barclays, and/or to -- to Weil, that there had
9 been an inadvertent notice given to Barclays
10 by folks in the -- I don't know who, but
11 someone at Barclays had sent a notice of
12 termination of the repo at some point, I
13 believe late Friday, and that that was done in
14 error and should be undone.

15 So if that's what you're asking
16 about, you've heard what my recollection is.

17 **Q. It is. Let me show you what's**
18 **previously been marked as Exhibit 27.**

19 **Have you seen that document before,**
20 **sir?**

21 **(Witness reviewing document.)**

22 A. No, I don't believe I have.

23 **Q. You learned about the inadvertent**
24 **termination of the repo over the weekend; is**
25 **that right?**

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<p>1 -Lewkow-</p> <p>2 A. Yes.</p> <p>3 Q. Was it the Saturday or the Sunday?</p> <p>4 A. I don't know.</p> <p>5 Q. Were you involved in any</p> <p>6 discussion, you or anyone else from Cleary or</p> <p>7 Barclays, involved in any discussions from the</p> <p>8 Lehman folks or Weil Gotshal about the</p> <p>9 inadvertent termination of the repo?</p> <p>10 A. It is my -- I don't think I</p> <p>11 personally was, but here as a</p> <p>12 30(b)(6) witness --</p> <p>13 Q. You are Cleary Gottlieb, sir.</p> <p>14 A. -- internally. I was perfectly</p> <p>15 happy not knowing in my life.</p> <p>16 It is my understanding that</p> <p>17 following up on the e-mail from Sullivan &</p> <p>18 Cromwell and the like, that the -- that there</p> <p>19 may have been some discussions about, you</p> <p>20 know, implementing this and getting it right</p> <p>21 to -- to -- because it was, as I -- as I was</p> <p>22 told at the time and we were told at the time,</p> <p>23 and as I testified to, it was sent in error.</p> <p>24 But I don't recall any other discussion.</p> <p>25 I'm not aware of any other</p> <p>TSG Reporting - Worldwide 877-702-9580</p>	<p>1 -Lewkow-</p> <p>2 discussion that Cleary Gottlieb was aware of</p> <p>3 with the other side on, on this subject.</p> <p>4 Q. That's sort of where I'm leading.</p> <p>5 Let me rephrase the question so you'll know</p> <p>6 what it is I'm looking for here.</p> <p>7 What knowledge does Cleary Gottlieb</p> <p>8 have that Weil Gotshal or Lehman knew about</p> <p>9 the termination of the repo, that it had been</p> <p>10 terminated?</p> <p>11 A. I believe, as I testified a minute</p> <p>12 ago, that there was an e-mail that Sullivan &</p> <p>13 Cromwell on behalf of Barclays sent to Weil</p> <p>14 Gotshal. And I believe there were some</p> <p>15 follow-up conversations referencing the fact</p> <p>16 that there had been an inadvertent notice that</p> <p>17 had been sent on this subject. Can I look at</p> <p>18 the Clarification Letter?</p> <p>19 Q. Sure. Paragraph 13 is probably</p> <p>20 where you want to go.</p> <p>21 A. Fine.</p> <p>22 Q. The language in Paragraph 13 was</p> <p>23 supplied by Sullivan & Cromwell, correct?</p> <p>24 A. I would have to look at this and</p> <p>25 compare it to the words in the e-mail. I</p> <p>TSG Reporting - Worldwide 877-702-9580</p>
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<p>1 -Lewkow-</p> <p>2 don't know the answer to that.</p> <p>3 Q. There is a reference in Paragraph</p> <p>4 13 to the Notice of Termination, do you see</p> <p>5 that?</p> <p>6 A. Yes.</p> <p>7 Q. Is the notice of termination that</p> <p>8 is referred to in Paragraph 13 of the</p> <p>9 Clarification Letter, the notice that we've</p> <p>10 marked as Exhibit 27?</p> <p>11 A. Well, it says it is a notice of</p> <p>12 termination in Paragraph 13 dated</p> <p>13 September 19. Exhibit 27 that you've shown</p> <p>14 me, that as I testified I do not believe I've</p> <p>15 ever seen, it is dated September 19th. It is</p> <p>16 from Barclays, it is to Lehman, and it says it</p> <p>17 is a notice of termination. So it appears to</p> <p>18 be it is, but that's all I can tell you.</p> <p>19 Q. Was there any discussion between</p> <p>20 the folks on the Barclays side of the table,</p> <p>21 including Cleary, and the folks on the Lehman</p> <p>22 side of the table including Weil Gotshal,</p> <p>23 about whether there were implications under</p> <p>24 the Bankruptcy Code to the fact that the repo</p> <p>25 had been terminated?</p> <p>TSG Reporting - Worldwide 877-702-9580</p>	<p>1 -Lewkow-</p> <p>2 A. It is my understanding that to the</p> <p>3 best of Cleary Gottlieb's knowledge, no.</p> <p>4 Q. Did Cleary Gottlieb have</p> <p>5 communications with any other person or entity</p> <p>6 outside of your client, outside of Barclays</p> <p>7 and Cleary, about Section 559 of the</p> <p>8 Bankruptcy Code in connection with the</p> <p>9 termination of the repo?</p> <p>10 MR. HUME: Outside of any</p> <p>11 privilege.</p> <p>12 MR. GAFFEY: Outside of any</p> <p>13 privilege, yes.</p> <p>14 A. To the best of my knowledge, no,</p> <p>15 subject to this caveat. You will be taking my</p> <p>16 partner's Ed Rosen's deposition. He was</p> <p>17 involved in the discussions with DTC and other</p> <p>18 clearance -- clearing entities. And since he</p> <p>19 was going to be the 30(b)(6) witness on those</p> <p>20 discussions, I have not consulted him. So as</p> <p>21 to whether or not there was anything on that</p> <p>22 point, I do not know the answer on behalf of</p> <p>23 Cleary Gottlieb. Subject to that, the answer</p> <p>24 is no.</p> <p>25 Q. Were there discussions about 559</p> <p>TSG Reporting - Worldwide 877-702-9580</p>

-Lewkow-
with any other self-regulating organizations or governmental agency concerning Section 559 of the Bankruptcy Code.

A. Not to my knowledge.

Q. Mr. Lewkow, I'm going to show you --

A. This is starting to look like my desk at the office.

Q. I'm trying to make you feel at home. Let me add this to the pile there and show you what previously was marked as Exhibit 579B, a Declaration of Alan Kaplan, deputy general counsel of Barclays, that's been submitted in Barclays's opposition papers on Rule 60. Have you seen this before?

A. I can't remember if someone showed me this in the last few days or not.

Q. Take a minute if you would --

A. I wouldn't swear that I haven't. But if so, I didn't read it very careful.

Q. There's a statement that Mr. Kaplan makes that I want to see if you had any knowledge about. And it's in Paragraph 4 of his declaration. He is referring to the

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-Lewkow-
notice going out erroneously, I'm paraphrasing. Then he says, "The parties corrected that error in Paragraph 13 of the Clarification Letter." Do you see that?

A. Yes, let me read all of Paragraph 4, if I may?

Q. Sure.

(Witness reviewing document.)

A. Remind me of the question?

Q. I think the question was: Do you see that? But --

A. I do.

Q. Okay. When Mr. Kaplan says "the parties", plural, "The parties corrected the problem with Paragraph 13", I show you that to see if it refreshes your recollection in any way whether there were any discussions between the parties, that is between Barclays and its representatives and Lehman and its representative, about the problem created by the termination of the repo?

MR. MORAG: Objection to the form.

A. I don't know what you mean by the "problem created." But I believe it was

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-Lewkow-
discussed between the fact that this change needed to be made, that it was sent in error. It was discussed at least briefly between the Barclays side, including Cleary and Sullivan & Cromwell, and the Lehman side including Weil, yes.

Q. Again, does it refresh your recollection, where you read Mr. Kaplan talking about "correcting an error," does it refresh your recollection about whether there were any discussions between the Barclays side of the table including Cleary, and the Lehman side of the table including Weil, about implications into the Bankruptcy Code from the termination?

A. I answered that question. To the best of my knowledge, there were no such discussions.

Q. If I could ask you to restrict your answer, sir, to yes or no to the question I'm about to ask you.

Were there any discussions between Barclays and Cleary concerning implications under the Bankruptcy Code of the termination

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-Lewkow-
of the repo? Yes or no?

MR. HUME: Objection to the extent it calls for privileged communications.

MR. GAFFEY: I'm not sure yes or no does. And I think I'm entitled to that information under local Rule 26.

MR. HUME: Well, what's your basis for saying --

MR. GAFFEY: Local Rule 26 provides that if privilege is asserted at a deposition, I'm entitled to the same information that would be included on a privilege log, which would be the author, recipient, subject matter of the communication, of the otherwise privileged communication.

That's why I'm restricting it to a yes or no.

MR. MORAG: The issue here though is you did not just ask about the subject matter of the termination notice being the subject of the conversation, you asked for yes or no as to the specific advice, whether it

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<p>1 -Lewkow-</p> <p>2 was discussed.</p> <p>3 MR. GAFFEY: Actually, no. I --</p> <p>4 MR. MORAG: You asked for the</p> <p>5 specific advice.</p> <p>6 MR. GAFFEY: It is phrased quite</p> <p>7 carefully not to. That's the point.</p> <p>8 That's the topic that would be on the</p> <p>9 privilege log.</p> <p>10 MR. MORAG: No, I believe it would</p> <p>11 be the Notice of Termination.</p> <p>12 MR. GAFFEY: Let me get a yes or no</p> <p>13 to that. Because I want to see where</p> <p>14 the instruction not to answer is</p> <p>15 framed.</p> <p>16 BY MR. GAFFEY:</p> <p>17 Q. Were there discussions between</p> <p>18 Cleary and Barclays concerning the termination</p> <p>19 of the repo? Yes or no.</p> <p>20 A. Yes.</p> <p>21 Q. When did those discussions take</p> <p>22 place?</p> <p>23 A. Some point over Saturday or Sunday.</p> <p>24 Q. Were there discussions between</p> <p>25 Barclays and Cleary Gottlieb about</p> <p>TSG Reporting - Worldwide 877-702-9580</p>	<p>1 -Lewkow-</p> <p>2 implications under the Bankruptcy Code in</p> <p>3 connection with the termination of the repo?</p> <p>4 Again, yes or no, please.</p> <p>5 DI MR. HUME: Again, objection. I</p> <p>6 instruct the witness not to answer.</p> <p>7 I don't believe the privilege log</p> <p>8 subject matter would have to reveal the</p> <p>9 specific nature of the communication,</p> <p>10 request for advice under Section Y, Y,</p> <p>11 Z. I mean --</p> <p>12 MR. GAFFEY: I understand you are</p> <p>13 going to assert it. I don't want to</p> <p>14 take time with the colloquy.</p> <p>15 MR. MORAG: Hold on one second.</p> <p>16 THE WITNESS: Can we talk outside?</p> <p>17 Is that all right?</p> <p>18 (Whereupon, a recess was taken</p> <p>19 from 12:07 p.m. to 12:09 p.m.)</p> <p>20 MR. MORAG: Subject to your</p> <p>21 agreement that whatever Mr. Lewkow</p> <p>22 responds will not constitute any waiver</p> <p>23 of the attorney/client privilege, which</p> <p>24 you said it wouldn't, but if you</p> <p>25 confirm that, Mr. Lewkow is prepared to</p> <p>TSG Reporting - Worldwide 877-702-9580</p>
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<p>1 -Lewkow-</p> <p>2 answer the question.</p> <p>3 MR. GAFFEY: Okay.</p> <p>4 THE WITNESS: Can I hear the</p> <p>5 question?</p> <p>6 MR. MORAG: The one that you were</p> <p>7 prepared to answer.</p> <p>8 MR. GAFFEY: I rephrased it. But</p> <p>9 let's read it back.</p> <p>10 THE WITNESS: Let's hear the last</p> <p>11 question.</p> <p>12 (Record read as follows:</p> <p>13 "Question: Were there discussions</p> <p>14 between Barclays and Cleary Gottlieb</p> <p>15 about implications under the Bankruptcy</p> <p>16 Code in connection with the termination</p> <p>17 of the repo? Again, yes or no,</p> <p>18 please.")</p> <p>19 A. To the best of my knowledge, no.</p> <p>20 Q. What needed to be corrected, then,</p> <p>21 in connection with the termination of the</p> <p>22 repo? Do you know?</p> <p>23 A. That it was in error. It wasn't</p> <p>24 supposed to be terminated. I think I was told</p> <p>25 that it would create a monstrous obligation to</p> <p>TSG Reporting - Worldwide 877-702-9580</p>	<p>1 -Lewkow-</p> <p>2 give notices and so forth and so forth to</p> <p>3 everyone who was on -- to various party,</p> <p>4 etcetera. That's all I remember.</p> <p>5 Q. Did you or anyone else at Cleary</p> <p>6 Gottlieb have an understanding that upon</p> <p>7 termination of the repo in financing haircut</p> <p>8 over and above the amount advanced would need</p> <p>9 to be repaid into the estate of LBI?</p> <p>10 MR. MORAG: Objection. I think you</p> <p>11 are asking for a legal opinion from</p> <p>12 this witness.</p> <p>13 MR. GAFFEY: You are right. Let me</p> <p>14 withdraw that.</p> <p>15 Q. Was there any discussion with</p> <p>16 anyone outside of the circle of Cleary and</p> <p>17 Barclays to the effect that the Bankruptcy</p> <p>18 Code would require the financing haircut in</p> <p>19 the repo to be paid back into the estate over</p> <p>20 and above the amount that Barclays had</p> <p>21 advanced in the Repurchase Agreement?</p> <p>22 A. Not to my knowledge.</p> <p>23 MR. MORAG: Objection to</p> <p>24 characterization.</p> <p>25 Q. Do you know if anyone at Cleary had</p> <p>TSG Reporting - Worldwide 877-702-9580</p>

1 **-Lewkow-**
2 **communications with anyone outside of**
3 **privilege, that is anyone outside of**
4 **communications with your client concerning**
5 **whether anyone would seek to stay the**
6 **application of 559 of the Bankruptcy Code in**
7 **connection with the termination of the repo?**

8 A. Not to my knowledge.

9 **Q. In your capacity as a 30(b)(6)**
10 **witness, have you inquired about that topic?**

11 A. Yes.

12 **Q. Is there a reason, Mr. Lewkow, that**
13 **Sullivan & Cromwell was given the**
14 **responsibility for drafting the language in**
15 **Paragraph 13 as opposed to Cleary?**

16 MR. MORAG: Objection.

17 MR. HUME: Objection. Calls for
18 privilege.

19 MR. MORAG: Yes, I mean --

20 THE WITNESS: I think I can give
21 some factual information, if you want
22 me to.

23 MR. GAFFEY: I do.

24 THE WITNESS: Let him ask the
25 question.

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1 **-Lewkow-**
2 MR. MORAG: I would ask you to
3 first pose the foundational question of
4 whether he knows there is a reason.

5 **Q. Do you know whether there's a**
6 **reason Sullivan & Cromwell drafted the**
7 **language in Paragraph 13?**

8 MR. HUME: I instructed the witness
9 not to answer that. To the extent it
10 reveals privilege, I don't know how you
11 can answer it otherwise.

12 THE WITNESS: I actually think I
13 can.

14 MR. HUME: If you can, go ahead.

15 A. We had, as I testified earlier,
16 basically nothing to do with the creation, the
17 documentation, the implementation of the repo.
18 I don't know whether Sullivan & Cromwell did
19 or not, but we had not. And so I'm not
20 surprised that we had nothing to do with
21 follow-ups with regard to that.

22 **Q. Let's clean up the pile again and**
23 **go back to the Lewkow declaration, which is**
24 **the first thing I showed you. I forget the**
25 **exhibit number.**

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1 **-Lewkow-**
2 **In Paragraph 4, again, Mr. Lewkow,**
3 **you say, this is the last sentence, "Further,**
4 **I do not recall anyone involved in the**
5 **transaction ever suggesting that the deal was**
6 **supposed to be a 'wash' with the value of**
7 **assets acquired equal to the value of**
8 **liabilities assumed."**

9 **Did you or anyone else from Cleary**
10 **Gottlieb ever have conversations with Bart**
11 **McDade about his understanding of the**
12 **transaction?**

13 A. Bart McDade was -- about his
14 understanding of the transaction, he was in
15 the room at the time the Asset Purchase
16 Agreement -- at times when the Asset Purchase
17 Agreement was being negotiated. So in that
18 context, I had -- we sort of had conversations
19 with him. I don't recall any other
20 conversations with him.

21 **Q. Were any of the conversations with**
22 **him addressed to the topic of whether or not**
23 **it was a transaction in which the assets and**
24 **liabilities were supposed to roughly match?**

25 MR. MORAG: Object to the form.

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1 **-Lewkow-**
2 A. I have included in my declaration
3 that I do not recall anyone involved in a
4 transaction ever suggesting that. And so that
5 is my recollection. And Bart McDade comes
6 within the term of "anyone."

7 **Q. I'm asking for a slightly different**
8 **question.**

9 **Was the topic ever discussed with**
10 **Mr. McDade?**

11 A. Not to my knowledge.

12 **Q. Was the topic ever discussed with**
13 **anyone --**

14 MR. HUME: Objection. Go ahead.

15 A. I don't know what the topic is.

16 **Q. -- whether --**

17 A. The deal was the deal, okay. The
18 agreement is reflected in the Asset Purchase
19 Agreement as originally entered into and then
20 as supplemented, clarified and amended by the
21 Clarification Letter.

22 **Q. I'm assuming, sir -- and correct me**
23 **if I'm wrong -- that there must have been some**
24 **discussions between the parties beyond the**
25 **level of well, the deal is the deal and it is**

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1 -Lewkow-

2 there in that piece of paper.

3 So in those discussions, were there
4 any discussions with Mr. McDade about whether
5 or not the deal was one where assets and
6 liabilities were supposed to roughly match?

7 A. I do not recall any discussion of
8 that topic with Mr. McDade.

9 Q. Were there any discussions with
10 anyone from Lehman as to whether or not the
11 deal was one where assets and liabilities were
12 supposed to roughly match?

13 A. The reason I am struggling with
14 your question is every time you have a
15 discussion about what the deal is and someone
16 doesn't say it is or it isn't a "wash"
17 transaction, is it about whether it is a
18 "wash" transaction? And insofar as that is
19 your question, well, then every conversation
20 was about whether it was or wasn't because it
21 was a discussion of what it was. But there
22 was no discussion of "wash" sales.

23 Q. It is a fair point. Let me just
24 clear the record up a little bit on it and
25 I'll move on to another topic.

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1 -Lewkow-

2 negotiations, if you mean had meetings with
3 any of those executives or their
4 representative, I do not -- I believe the
5 answer is no.

6 Q. You seemed concern. We may have a
7 disconnect on the phrase "involved" here.

8 Was there any indirect role for
9 Cleary in connection with the offering of
10 employment to Lehman executives by Barclays?

11 A. The only -- the reason I phrased it
12 the way I did is because what I do not recall
13 is whether anyone at Cleary Gottlieb drafted
14 or saw a form of -- form of potential
15 employment agreement at some point that may or
16 may not have ever been, you know, traded with
17 any of the potential senior people, the eight
18 senior officials that were originally covered
19 by the Asset Purchase Agreement.

20 Q. Do you know if there were
21 employment negotiations between Barclays and
22 Lehman executives other than the eight to whom
23 you just referred?

24 A. At what time period are we talking
25 about?

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1 -Lewkow-

2 So I take it from your answer that
3 there was no discussion about that topic as
4 opposed to discussions that didn't mention it
5 and therefore, excluded it?

6 A. I do not --

7 Q. There were no discussions about
8 that topic?

9 MR. MORAG: Let him finish the
10 question so the record is clear.

11 Q. There were no discussions expressly
12 about that topic?

13 A. To the best of my recollection,
14 there were none.

15 Q. Now, in Paragraph 5 of your
16 Declaration, generally the top Paragraph 5 and
17 6, you talk about generally the topic of
18 employment offers made by Barclays to certain
19 Lehman executives, and I'd like to ask you
20 some questions about that.

21 Was Cleary Gottlieb involved in any
22 way in the negotiations between Barclays and
23 Lehman executives to whom job offers were
24 made?

25 A. I cannot recall -- "involved" in

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1 -Lewkow-

2 Q. Prior to the closing of September
3 22nd.

4 A. I don't know about negotiations.
5 As I said in my declaration, it was clear that
6 it was very important to Barclays, everyone,
7 it was discussed that -- when you buy -- many
8 people have bought investment banking firms or
9 the businesses from such firms and spent a lot
10 of money, and then spent a lot more money
11 trying to keep people and then had those deals
12 blow up in their faces.

13 So everyone was aware that Barclays
14 wanted to retain not just eight people but a
15 lot of other key people, and that was
16 well-known. I do not know -- we were not
17 involved in any specific conversations, but it
18 would not -- consistent with my declaration,
19 it wouldn't surprise me if some of those
20 people particularly said, "Gee, we really look
21 forward..." I just don't know.

22 Q. Look for a minute at Paragraph 9 of
23 your Declaration where you referred, and I
24 asked you about this sentence a while ago.
25 You say, "While I was not present for the

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-Lewkow-
actual discussions between Barclays and Lehman traders..." are you with me?

A. That's correct.

Q. Do you know if any of the Lehman traders described in Paragraph 9 were among the Lehman employees to whom Barclays offered employment prior to September 22nd?

MR. MORAG: Object to the form.

A. I have no idea.

Q. Were there any discussions between Cleary and Barclays on the one hand and Lehman and Weil on the other hand about the degree to which the extent and nature of employment should be disclosed?

A. No.

Q. Do you know --

A. Not to the best of my recollection.

Q. Do you know if the nature and extent of the negotiations was disclosed to the Lehman Board?

A. I have no idea what was disclosed to the Lehman Board.

Q. At any point in the negotiations of the transaction or the discussions between the

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-Lewkow-
parties prior to the closing on September 22nd, did Cleary ask to see the minutes of any Lehman Board meeting concerning the transaction?

A. No.

Q. Is that something that as an M&A lawyer you normally would ask for in a deal where you have a little more time than you had here?

MR. MORAG: Objection to form.

A. Probably not. In fact, I think it would be highly unusual.

Q. Do you know if Barclays made an offer of employment to Mr. McDade prior to September 22, 2008?

A. I have a very vague recollection, and I -- from the time. But I've heard it since, so I'm not 100 percent certain I heard it at the time.

But I believe I heard at the time, whether they had offered it or not, but it had been determined that he had made a determination early on that he would not -- would not go with the business. And the

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-Lewkow-
assumption was that he would not be joining the business.

Q. I want to make sure your record and my record are clear here.

Can you tell me if you learned that before or after September 22nd?

A. What I just testified is, I'm not sure. I believe I had learned it before, but I'm not certain of that.

Q. Mr. Lewkow, I'm putting before you what was previously marked as Exhibit 581B, minutes of the meeting of Barclays Board of September 16, 2008. Have you seen those minutes before?

A. No.

Q. On page 3 of that exhibit, sir, is Paragraph 5 entitled "Retention of Lehman Staff, which says, "An in principle agreement had been reached with Lehman's U.S. senior leadership team on the bonus arrangements subject to approval of the proposals by the Board HR and Remuneration Committee."

I know you haven't seen the document before. Did Cleary know one way or

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-Lewkow-
the other that there were in principle agreements between Barclays and Lehman's U.S. senior leadership team on or about September 16, 2008?

MR. HUME: Objection. Vague.

MR. MORAG: Objection to the form.

MR. GAFFEY: Let me make it clear.

You are right.

Q. Did you know that on September 16th?

MR. HUME: Same objection.

A. September 16th? I don't know what "U.S. senior leadership team" means. I'm not sure if they are talking about there is a provision in the Asset Purchase Agreement about certain bonuses. But other than that, I have no idea what this is talking about.

MR. GAFFEY: That just saved me a whole page of my notes.

Q. Mr. Lewkow, I'm handing you a series of documents which previously had been marked Exhibit 28, 29, 30, 31, 32, 33, 34, 35, 36 and 37. And you will see, sir, that they consist of various iterations of the

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1 **-Lewkow-**
2 **Clarification Letter. I want to go through**
3 **some of them.**

4 **And you will need handy, from**
5 **amidst the other documents, we will refer from**
6 **time to time to Exhibit 25, the final.**

7 A. Oh, the final? The Asset Purchase
8 Agreement, too.

9 **Q. We may get to that, too. But maybe**
10 **not.**

11 A. As long as there is no quiz on it.
12 I guess it is --

13 **Q. The quiz will come after I take the**
14 **exhibits away from you. It is sort of an open**
15 **book test.**

16 **You testified a little while ago or**
17 **we talked a little while ago concerning a**
18 **point at which the language of the first**
19 **paragraph of the final Clarification Letter**
20 **came to include the phrase "supplement" and**
21 **the phrase "amend." I just pinpoint that**
22 **generally for the topic. All right?**

23 A. I testified a little bit about the
24 word "amends," yes.

25 **Q. Will you take a look in the stack I**
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1 **-Lewkow-**
2 **have in front of you at Exhibit 34.**

3 MR. GAFFEY: Let's go off the
4 record for a minute.

5 (Witness reviewing document.)

6 A. I'm looking in Exhibit 34.

7 **Q. Within Exhibit 34, it is both a**
8 **clean and a blacklined draft. The blackline**
9 **begins on page 10279851 in the lower**
10 **right-hand corner. If you could go there,**
11 **that will be helpful.**

12 MR. MORAG: Is there a reason that
13 all the pages are numbered 10279851?

14 MR. GAFFEY: Yes. It has to do
15 with how they were numbered at the
16 outset. They weren't Bates.

17 A. Okay. I'm looking.

18 **Q. Do you see there that in that**
19 **blackline which is in a draft bearing a date**
20 **of September 19th, "WGM comments,**
21 **September 19th noon," the blackline indicates**
22 **that the phrase "supplements in certain**
23 **respects the agreements of the parties stated**
24 **therein, and shall amend the Agreement to the**
25 **extent necessary so as to be consistent with**

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1 **-Lewkow-**
2 **this letter and" has been added in the**
3 **blackline?**

4 A. I see that.

5 Can I just state, on the page you
6 are pointing to, it does say, "September 19th
7 at noon." But my recollection is consistent
8 with, if you go to the first page of this
9 exhibit, I never saw the version that's at the
10 top that shows an e-mail from Andy Keller to
11 Steve Berkenfeld, not surprisingly.

12 The next -- but that then forwards
13 a prior e-mail from Robert Messineo of Weil to
14 a number of people, including me.

15 **Q. Right.**

16 A. And you will see that is --

17 **Q. September 19th, nine minutes after**
18 **noon, right?**

19 A. Well...

20 (Witness reviewing document.)

21 **Q. So does that cover e-mail indicate**
22 **to you that you had at least transmitted to**
23 **you this draft at or about the time it was**
24 **prepared?**

25 A. Yeah, I don't remember when I saw

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1 **-Lewkow-**
2 **it. Uh-huh.**

3 **Q. Okay.**

4 **I'm going to ask you two questions.**
5 **I will tell you why I'm asking the first one.**
6 **I'm going to ask you if it pinpoints your**
7 **memory of when the decision to include the**
8 **phrase "supplement and amends" was included**
9 **and whether it refreshes your recollection as**
10 **to whether there were any events as to why it**
11 **was determined to include it at that point?**

12 MR. MORAG: Objection. Compound.

13 **Q. But you can answer.**

14 A. It clearly came first. This was
15 presented to us by Weil Gotshal. They added
16 those words. I do not recall whether there
17 was any conversation before then as to the
18 fact that they were going to add those words
19 when they prepared this draft. And since I
20 don't recall any discussion on the front, I
21 can only speculate, which I will not do, as to
22 why Weil added those words.

23 **Q. I most certainly don't want you to**
24 **speculate. I just want to know -- I take it**
25 **the answer is no -- whether this refreshes**

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<p>1 -Lewkow-</p> <p>2 your recollection as to whether any</p> <p>3 development or event in the negotiations gave</p> <p>4 rise to a decision to add the words</p> <p>5 "supplement and amend"?</p> <p>6 MR. MORAG: That was communicated</p> <p>7 to you.</p> <p>8 MR. GAFFEY: That Cleary knew</p> <p>9 about. This is a 30(b)(6) witness.</p> <p>10 A. I would need to -- let me just</p> <p>11 think for a minute.</p> <p>12 I don't recall.</p> <p>13 Q. Okay. Within the pile that I gave</p> <p>14 you a moment ago, will you turn to Exhibit 31,</p> <p>15 that's a September 18th -- it is under an</p> <p>16 e-mail.</p> <p>17 A. I'm sorry. Which document?</p> <p>18 Q. 31. That's under an e-mail from</p> <p>19 Dave Messineo to you dated September 18, 2008,</p> <p>20 11:40 p.m. GMT. Do you see that?</p> <p>21 A. Thursday night, yes.</p> <p>22 MR. MORAG: Can I just make a</p> <p>23 statement for the record? And I'm not</p> <p>24 suggesting this is the case. But with</p> <p>25 respect to Exhibit 34, I just did</p> <p>TSG Reporting - Worldwide 877-702-9580</p>	<p>1 -Lewkow-</p> <p>2 notice that as an e-mail emanating from</p> <p>3 Weil Gotshal, it does not indicate at</p> <p>4 the bottom that there, in fact, was an</p> <p>5 attachment. I've often meant to send</p> <p>6 attachments that I didn't actually</p> <p>7 attach. And I'm not saying we didn't</p> <p>8 get it. But Exhibit 31, which also</p> <p>9 emanates from Weil Gotshal, does</p> <p>10 indicate below the subject line an</p> <p>11 attachment.</p> <p>12 THE WITNESS: We did get this.</p> <p>13 MR. MORAG: Okay.</p> <p>14 THE WITNESS: We did get this.</p> <p>15 MR. GAFFEY: So we don't have to be</p> <p>16 troubled by that. I get the concern.</p> <p>17 Do you notice it says "attached</p> <p>18 Clarification Letter"?</p> <p>19 MR. MORAG: It says it on the</p> <p>20 forward.</p> <p>21 THE WITNESS: It doesn't say it on</p> <p>22 the lower one, but that may be a</p> <p>23 difference between the Simpson system</p> <p>24 and how we attached it and the like.</p> <p>25 We did receive it.</p> <p>TSG Reporting - Worldwide 877-702-9580</p>
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<p>1 -Lewkow-</p> <p>2 MR. MORAG: There are a number of</p> <p>3 drafts in this case that weren't sent</p> <p>4 to us.</p> <p>5 THE WITNESS: But this one, we did</p> <p>6 receive this one.</p> <p>7 MR. GAFFEY: My questions have</p> <p>8 nothing to do with when you got it. If</p> <p>9 I'm going to get there, I'll try to be</p> <p>10 very clear about it. So if that's a</p> <p>11 concern, you raise it.</p> <p>12 BY MR. GAFFEY:</p> <p>13 Q. My question, Mr. Lewkow, goes to</p> <p>14 Paragraph 10 of the draft that is within this</p> <p>15 document.</p> <p>16 A. Of 31? Of Exhibit 31?</p> <p>17 Q. Of Exhibit 31, yes.</p> <p>18 A. Which was late --</p> <p>19 Q. The draft is entitled "WGM</p> <p>20 Comments, September 18, 7:30 p.m."</p> <p>21 A. Right. Although it was sent to us</p> <p>22 at 11:40 p.m. on Thursday, September 18th.</p> <p>23 Q. GMT, which would put you at 7:40</p> <p>24 p.m. We spent a lot of time on this</p> <p>25 documents, sir.</p> <p>TSG Reporting - Worldwide 877-702-9580</p>	<p>1 -Lewkow-</p> <p>2 A. Oh, you did? You're right, I</p> <p>3 guess.</p> <p>4 Q. So if would you take a look at</p> <p>5 Paragraph 10, which has no translation. It is</p> <p>6 Paragraph 10.</p> <p>7 A. Yes.</p> <p>8 Q. There is a reference to the</p> <p>9 "9/16/08 balance sheet." Do you see that?</p> <p>10 A. Yes.</p> <p>11 Q. Do you know if that balance sheet</p> <p>12 that's referred to there is the one that was</p> <p>13 marked as Exhibit 19 that I showed you before?</p> <p>14 A. Is and was at the time my</p> <p>15 understanding that what they were referring to</p> <p>16 here was either the exhibit you mentioned or,</p> <p>17 as I testified earlier, some variant of that.</p> <p>18 I do not know it was precisely the one, but</p> <p>19 something like that exhibit that you just</p> <p>20 mentioned.</p> <p>21 Q. To push that point a bit further,</p> <p>22 if you can take a look at Exhibit 19 and look</p> <p>23 at the lower right-hand corner and see that</p> <p>24 it's got a time stamp on it of 11:18 a.m.</p> <p>25 (Witness reviewing document.)</p> <p>TSG Reporting - Worldwide 877-702-9580</p>

-Lewkow-

A. So it does.

Q. And the reference to Paragraph 10 is to a balance sheet printed at 11:18 a.m. on 9/16/08?

A. Yes, it is.

Q. Does that refresh your recollection in any way?

A. It seems to be.

Q. Does any of this refresh your recollection as to whether there were discussions during the course of the week after the APA had been signed about that balance sheet marked as Exhibit 19?

A. My recollection, and I don't recall whether we knew this was going to be in the draft or not, but my recollection is that this showed up and we didn't think it was appropriate to start dealing with that document, which we had not intended to and had not included as an exhibit to the Asset Purchase Agreement. And so this did not stay in the Clarification Letter.

Q. Were there any discussions between Barclays and Cleary Gottlieb on the one hand

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-Lewkow-

and Lehman and Weil Gotshal on the other about whether or not to include that sheet as an exhibit to the Asset Purchase Agreement?

A. I believe that during the -- at some point at the very end of the finalization of the Asset Purchase Agreement, and it may have been -- you know, it was a final meeting at which people tried to finalize the Asset Purchase Agreement, and that is the meeting at which a Simpson Thacher associate sat between me and John Findley of Simpson Thacher and tried to act as scribe as the combined group of people around a very large rectangular table, square table reached agreement on final changes. And then she entered in handwritten form, which we have looked at previously or I testified about earlier today.

I believe, I'm not sure, but I believe it was in that context that someone on the Lehman side would have raised the idea, would it make sense to attach this document, Exhibit 19, or some variant thereof to the Asset Purchase Agreement. And a decision was made collectively not to do so.

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-Lewkow-

Q. What was the basis for the decision made collectively not to do so?

A. The agreement --

Q. I withdraw "basis."

What was the reason it was decided not to do that?

A. My recollection is that the piece of paper had been prepared by Lehman and shown to us and the like, and that there was one reference to it that was going into the Asset Purchase Agreement, but that it did not -- the agreement in the deal was to be embodied in the Asset Purchase Agreement, and we had not spent any specific time looking at Exhibit 19 or any variant of it with a view towards having legal significance and what it might mean and how it might modify the Asset Purchase Agreement.

The Asset Purchase Agreement was intended to stand on its own two feet.

Q. Let me ask you to put before you Exhibit 35. It is included in the packet of documents that I gave you.

A. Sure. Yes.

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-Lewkow-

Q. And Exhibit 35, the first page, has an e-mail from David Murgio at 9:15 p.m. GMT, September 19, 2008 to among others you. And it attaches this, another draft of the Clarification Letter?

A. Correct.

Q. If you would, again, sir, please turn within the document to the blackline section which begins at page 10279864.

A. Yup.

Q. And within the definition of "Purchased Assets," "Excluded Assets" on the first page of that blackline --

A. On the first page? First what?

Q. On the first page of the blackline. Okay? Paragraph 1 of the blackline.

A. Okay. You referred -- I didn't realize 64 was on all the pages.

Q. It is. It is the first page marked 64.

A. Okay.

Q. And it is Paragraph 1, "Purchased Assets."

The underscored language in that

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draft includes the following, "Plus with respect to securities of LBI shall also include municipal securities, residential mortgage securities and other securities of which a summary description by category is reflected in Exhibit A hereto. It being understood that the long positions referred to in clause (d) of Purchased Assets do not have a book value of approximately 70 million." We will take the "million" as a typo. I don't think anybody used that number anywhere in this deal.

My question to you, sir, is: Do you recall a point in the negotiations of the terms of the Clarification Letter where language like this was proposed for the definition of "Purchased Assets"?

A. Let me respond with a number of comments.

One, when we look at the first page of this exhibit, this was sent at 9:15 GMT, which you pointed out in the other one, which makes it 5:15 New York time. At 5:15 New York time, I was sitting in Judge Peck's

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-Lewkow-
room and the like. So none of us in the courtroom -- if I snuck a look at my BlackBerry, I might have known that this document had arrived, but I certainly had not looked at it at that stage.

By the time -- I believe some of my colleagues did look at it. By time the Court had approved the sale around midnight, I believe -- and I then went back to the office. I think either late that night, I think we were told by Weil basically that this draft did not reflect the discussions that had taken place in the hour or two or three before the Court hearing had begun, were written by lawyers who had not been involved in those discussions and that a new draft would be prepared and we really should not spend a lot of time worrying about this.

And in fact, a new draft was furnished to us some time early afternoon, I believe, on Saturday.

Q. In what respect did Weil lawyers tell you in that conversation the draft did not reflect the discussions that had taken

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-Lewkow-
place in the hour or two or three before the Court hearing?

A. That it didn't.

Q. Other than the statement that it did not, did they provide any more detail as to the manner --

A. The lawyers --

Q. -- in which it did not?

A. I believe that the lawyers who said that were the ones who had not been in on the discussions and they knew the discussions had taken place that had not been -- they had not been aware of when they did this. And I believe that's all they've done, to the best of my knowledge.

Q. In your Declaration, you refer at some point to the fact that a draft of the Clarification Letter had been sent by BlackBerry during the sale hearing. I have to confess I'm panting a little bit because I can't find exactly where you say that.

A. It's not in my declaration?

Q. I don't think so.

MR. MORAG: It's Paragraph 11.

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-Lewkow-

THE WITNESS: Yes, it is.

(Witness reviewing document.)

Q. Here we go. Second sentence of Paragraph 11, "Weil had circulated a revised draft of the Clarification Letter by e-mail during the sale hearing". Do you recall that?

A. Yes. That's the one that I mentioned. It's this draft that arrived while I was in court, correct.

Q. That's this draft marked as Exhibit 35?

A. Correct.

Q. Did anyone in the court have any discussions about the draft that was circulated by e-mail?

A. No.

Q. So other than this statement in your Declaration that was circulated by e-mail, do you have anything you can add as to what anybody did about that fact? Anybody read it? Talk about it?

A. No one -- no one had more than a BlackBerry, no copies were ever delivered, to my knowledge, certainly not to Cleary Gottlieb

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<p>1 -Lewkow-</p> <p>2 or Barclays in the courtroom. Whether</p> <p>3 somebody from Weil had them handed a draft or</p> <p>4 not? I don't know. But certainly no one on</p> <p>5 our side saw them in the courtroom.</p> <p>6 Q. Now, there's a reference in the</p> <p>7 blacklined portion of Paragraph 1 of</p> <p>8 Exhibit 35 to a Schedule A, in that sentence I</p> <p>9 read you about the long position? Do you see</p> <p>10 that?</p> <p>11 A. Yes.</p> <p>12 MR. HUME: "Exhibit A."</p> <p>13 MR. GAFFEY: No. Schedule A.</p> <p>14 THE WITNESS: No. It actually says</p> <p>15 "Exhibit A."</p> <p>16 Q. You're actually right.</p> <p>17 A. I see that.</p> <p>18 Q. Was there any discussion that the</p> <p>19 "Exhibit A" referred to there was the sheet</p> <p>20 marked as Exhibit 19?</p> <p>21 A. Well, there was no discussion of</p> <p>22 this letter that I was aware of. I believe if</p> <p>23 you look at subsequent drafts, the concept of</p> <p>24 Exhibit A that dealt with -- it did survive,</p> <p>25 but it was a very different -- it was not</p> <p>TSG Reporting - Worldwide 877-702-9580</p>	<p>1 -Lewkow-</p> <p>2 anything approaching Exhibit 19.</p> <p>3 Q. Now --</p> <p>4 A. But I don't know what -- I do not</p> <p>5 know what Weil Gotshal had in mind, whether</p> <p>6 they had in mind something like Exhibit 19,</p> <p>7 but it certainly didn't stay in the</p> <p>8 agreement -- in the draft of the Clarification</p> <p>9 Letter.</p> <p>10 Q. Now, at this point in the</p> <p>11 chronology, let me be clear about this point,</p> <p>12 the hearing is over, you're back at your</p> <p>13 office, you were told by these Weil lawyers,</p> <p>14 look, this draft doesn't reflect what happened</p> <p>15 in the two or three days before the hearing,</p> <p>16 at that point in time --</p> <p>17 A. Can I interrupt you?</p> <p>18 Q. Absolutely.</p> <p>19 A. I don't think you got my testimony</p> <p>20 correctly. But it may be that I didn't state</p> <p>21 it clearly.</p> <p>22 I'm not sure that when I got back I</p> <p>23 had a conversation with Weil. I believe I got</p> <p>24 back and I was told by one of my colleagues</p> <p>25 that they had been told that by Weil.</p> <p>TSG Reporting - Worldwide 877-702-9580</p>
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<p>1 -Lewkow-</p> <p>2 Q. Okay. You get back to your office,</p> <p>3 you learned that Weil has said, this draft</p> <p>4 won't work because it doesn't reflect the</p> <p>5 changes made in the two or three hours?</p> <p>6 A. I might also have been told that, I</p> <p>7 don't recall, but Tom Roberts or others who</p> <p>8 were in the courtroom from Weil Gotshal, that</p> <p>9 they might have said, ignore the stuff that my</p> <p>10 colleague sent you. I just don't recall.</p> <p>11 Q. Do you recall Ms. Fife saying to</p> <p>12 the judge at the sale hearing, we are working</p> <p>13 on a Clarification Letter and we hope to have</p> <p>14 it down here?</p> <p>15 A. I believe she did say something</p> <p>16 along that line, yes.</p> <p>17 Q. At that point, during the sale, by</p> <p>18 the time you're certainly in the middle of the</p> <p>19 sale hearing, before that, had there been any</p> <p>20 discussions between Barclays and its</p> <p>21 representatives on the one hand and Lehman and</p> <p>22 its representatives on the other, about</p> <p>23 whether the Clarification Letter would need to</p> <p>24 be submitted to the Court for approval?</p> <p>25 MR. MORAG: Objection to the form.</p> <p>TSG Reporting - Worldwide 877-702-9580</p>	<p>1 -Lewkow-</p> <p>2 A. My recollection is that on</p> <p>3 Wednesday and Thursday the goal had been to</p> <p>4 have a Clarification Letter that we could</p> <p>5 submit to the Court. The process was taking a</p> <p>6 longer time than anyone would have hoped,</p> <p>7 through no one's fault since everybody</p> <p>8 operated in good faith to try to get it done.</p> <p>9 But then on -- so it was already</p> <p>10 moving slowly. And by Friday, it was my</p> <p>11 understanding that Lehman and Barclays</p> <p>12 officials both learned that there were</p> <p>13 substantial assets that Barclays -- that the</p> <p>14 agreement contemplated -- the Asset Purchase</p> <p>15 Agreement contemplated that Barclays was going</p> <p>16 to receive as part of its acquisition of</p> <p>17 basically -- issue with only specified</p> <p>18 exceptions, basically all of the assets of the</p> <p>19 business. And there were a lot less -- in</p> <p>20 terms of financial assets that it turned out</p> <p>21 there were going to be a lot fewer than that</p> <p>22 Lehman was going to be able to deliver.</p> <p>23 And that had led to discussions</p> <p>24 that took place during the day Friday -- I</p> <p>25 don't know exactly when they started and when</p> <p>TSG Reporting - Worldwide 877-702-9580</p>

-Lewkow-
they ended. I don't know if they were in person or over the phone -- between not the lawyers, between representatives of Barclays and representatives of Lehman. And that was going on until very shortly before the Court hearing began.

So while it had been contemplated the day before that we would try to have a proposed form of, or maybe an actual form, I don't recall which, of Clarification Letter to provide to the Court, that events made that impossible.

Q. Now, I take it that between the time of this draft marked as Exhibit 35 and the finalizing of the Clarification Letter on Monday, the signing of the Clarification Letter on Monday, other changes are made. We will get to those, but I just want to establish the fact that changes were made over the weekend, correct?

MR. HUME: Objection, vague.
Changes to what?

MR. GAFFEY: To the Clarification Letter.

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-Lewkow-
A. Changes to the draft Clarification Letter were made that are reflected in the final Clarification Letter that was signed, yes.

Q. And some of those changes were made over the weekend, Saturday the 20th and Sunday the 21st, correct?

A. New drafts were being prepared and changes to the prior draft were therefore made, correct.

Q. Now, the discussions that you learned had taken place on Friday morning between non-lawyers for Lehman and Barclays that you referred to a moment ago --

A. Morning or early afternoon. I'm not sure which.

Q. Was it your understanding that those discussions were to include assets in the deal, to make up for assets that Lehman had not been able to deliver?

MR. MORAG: Objection to form.

A. Let me -- I think, I was told -- and now I want to carefully describe how I was told it. But I was told it twice about the

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-Lewkow-
conversation. I'm doing this and I'm looking at my counsel and Barclays counsel, so they'll caution me, I think.

But I was told substantially the same. And to the extent there's differences, I don't remember which is which and what was the difference. I was told twice about the results of the conversations that I just alluded to that took place between Barclays representatives and Lehman representatives during the day Friday before the Court hearing.

I arrived at the courthouse shortly before the Court was supposed to convene for this case. And while I was still outside the courtroom, having arrived -- while I was still outside -- not outside the courtroom, outside the courthouse. While I was still outside the Customs House, another car arrived, or taxi and out came several Barclays representatives, including Michael Klein.

Michael Klein, I may have said, what's going on or what happened or something like that --

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-Lewkow-

MR. HUME: Why don't I interject.

THE WITNESS: Okay. I don't have to stay with that.

MR. HUME: To the extent --

THE WITNESS: Let me jump ahead. Let me just jump ahead. Go ahead.

MR. HUME: Just so the record is clear, to the extent Barclays representatives communicated to you in a privileged setting facts that they later communicated in a way that is not privileged, you should disclose --

THE WITNESS: The latter.

MR. HUME: Be careful, but disclose only what was not privileged.

BY MR. GAFFEY:

Q. On that point, I want you to go back to what was next in a minute. But Klein is there. Who else was there? Anybody non Barclays was there?

A. Not downstairs, no.

Q. So it was Barclays people and you?

A. I had a conversation, and he summarized the results of the conversation.

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1 -Lewkow-
2 We then all went to the courtroom,
3 which was a zoo, if I can use that technical
4 term. And I was near the front of the
5 courtroom near the well.

6 I was sitting on -- I managed to
7 get a seat which not many of us did -- on the
8 side. I can't remember if there was a jury
9 box in that courtroom or not. If so, I was
10 just in the chairs just inside what would have
11 been a jury box and next to the table at which
12 Weil Gotshal as debtor's counsel was sitting.

13 And there was a conversation that
14 took place that -- of, you know, somewhere
15 between four and eight people, I can't -- I
16 think it was at least five people, six people,
17 including Michael Klein, myself, Lori Fife,
18 and a few other people. And it may -- among
19 those other people may have been -- I don't
20 think Harvey Miller was one of them. I'm not
21 100 percent certain. I believe that one of
22 them may have included, one or more of them
23 may have been Lehman Brothers business folks
24 or representatives, or Lazard representatives.
25 I'm not sure. I don't remember.

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1 -Lewkow-
2 The only three people I am sure of
3 were present were Michael Klein, Lori Fife and
4 me. There may have been somebody else from
5 Barclays there as well, like Archie Cox. I
6 just don't remember.

7 And Michael repeated it enough --
8 as I said in the beginning, I don't recall
9 which conversation is which. And they were in
10 all, to the extent I can recall, they covered
11 the same topic and were consistent with each
12 other and I'm sure he used different words and
13 the like. But he repeated what he had told me
14 outside 30 or 40 or 50 minutes earlier, or 15
15 or 10 or whatever.

16 **Q. What did he say?**

17 A. I thought you'd ask that.

18 He reported -- and I had -- he
19 reported that it turned out that Lehman and
20 Barclays had both -- officials had both
21 learned in the prior 24 hours that a number of
22 categories of assets that Lehman had told
23 Barclays and agreed before the Asset Purchase
24 Agreement had been signed and were covered by
25 the Asset Purchase Agreement, as to categories

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1 -Lewkow-
2 -- specifically specified categories.
3 And of course, as you know,
4 Barclays was to get under the Asset Purchase
5 Agreement, except for specified excluded
6 assets, we were supposed to get all assets
7 used in the business. But there were certain
8 assets, including financial assets that were
9 included within that universe but were also --
10 and so that Barclays had been led to believe
11 were going to be delivered. That would be
12 true whether or not they were also articulated
13 as within the including language that follows
14 in the definition of "Purchased Assets."

15 But -- so it's the same universe
16 either way. But certain of those assets,
17 which we have been told were among the assets
18 that Barclays would be getting would not --
19 were not available to be transferred to us.
20 That they either did not own or they had
21 double counted or they were subject to liens
22 in favor of third parties and they could not
23 be delivered. And so he reported that.

24 And he said that this was -- and
25 again, I believe there may have been a Lehman

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1 -Lewkow-
2 person standing there, but I can't tell you
3 who, or a Lazard person, and that he had
4 created real issues as to whether the deal
5 could be due -- doable.

6 He went on to describe a number of
7 things that had come out as further
8 investigation as to facts as well as further
9 discussions and negotiations as to what to do,
10 as to whether this deal could be saved and
11 whether there would be no deal and there would
12 be no one to purchase the assets and to
13 purchase the business and leave the creditors
14 to a liquidation scenario.

15 But he reported on a number of
16 things. First of all, that two category of
17 assets should have been identified that could
18 have been included in assets that Lehman used
19 in the business and, therefore, should be
20 coming to Barclays pursuant to the Asset
21 Purchase Agreement, which had not been
22 specifically ever mentioned or focused on by
23 Barclays. And that those helped to some
24 extent mitigate the shortfall that I just
25 described based on what we had known.

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<p>1 -Lewkow-</p> <p>2 So, we had learned things that</p> <p>3 reduced the pool of assets that were worth --</p> <p>4 substantially all the assets that we were</p> <p>5 getting. But that there were two categories</p> <p>6 of assets that were within what we were</p> <p>7 getting that we had not focused on and that</p> <p>8 Lehman had not told us about were within the</p> <p>9 pool of assets that Lehman had available for</p> <p>10 transfer, that they could transfer and would</p> <p>11 transfer pursuant to the deal.</p> <p>12 And those, those two categories</p> <p>13 were the 15c3-3 reserve account or something</p> <p>14 like that. I'm not sure "reserve" is the</p> <p>15 right account. And where I was told -- I</p> <p>16 remember often this one being told the precise</p> <p>17 number, but I don't remember what number it</p> <p>18 is. But it was slightly over a billion-seven</p> <p>19 in -- and I believe he said in security, but</p> <p>20 he may -- he may not have been that specific.</p> <p>21 And the second was assets in what I</p> <p>22 was told was something called the clearance</p> <p>23 box about -- again, I may have been given a</p> <p>24 more specific number but this one is less</p> <p>25 vivid in my mind, of approximately two billion</p> <p>TSG Reporting - Worldwide 877-702-9580</p>	<p>1 -Lewkow-</p> <p>2 of assets, and that these assets were</p> <p>3 available and would be transferred by Lehman</p> <p>4 as part of the transfer of essentially all the</p> <p>5 assets that they were going to be giving us.</p> <p>6 I was also told of some discussions</p> <p>7 of changes that needed to be made to the deal</p> <p>8 because that didn't -- the identification of</p> <p>9 those assets, of additional -- those assets</p> <p>10 that would be transferred as part of the deal</p> <p>11 didn't solve by any means the entirety of the</p> <p>12 problem that had been learned by both sides as</p> <p>13 to other assets that could not be transferred.</p> <p>14 And that certain changes to the</p> <p>15 deal were going to be made.</p> <p>16 One was -- and that first, another</p> <p>17 negative change in the deal from Barclays's</p> <p>18 perspective in that there was a -- there was</p> <p>19 in the Asset Purchase Agreement a concept</p> <p>20 of -- I forget what the word was. "Retained</p> <p>21 cash." It was a very strangely drafted</p> <p>22 clause. Because retained cash was Lehman's</p> <p>23 cash that Barclays would get and in a sense it</p> <p>24 was retained because it would be retained for</p> <p>25 use in the business that we were effectively</p> <p>TSG Reporting - Worldwide 877-702-9580</p>
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<p>1 -Lewkow-</p> <p>2 purchasing all the assets of, and certain --</p> <p>3 and assuming certain specified liabilities.</p> <p>4 And so I was told that the fact</p> <p>5 that Lehman would receive the -- Lehman would</p> <p>6 transfer the so-called retained cash was</p> <p>7 dropping away and that Barclays would not get</p> <p>8 that cash. I believe -- I believe I was told</p> <p>9 that they just didn't have free cash sitting</p> <p>10 around, but I don't remember precisely what</p> <p>11 words were used. I don't remember precisely</p> <p>12 what the words were on any, any of these.</p> <p>13 This is my recollection and paraphrase of what</p> <p>14 he told the group in the well in the courtroom</p> <p>15 before the hearing started with a half a dozen</p> <p>16 or so people.</p> <p>17 He also talked about a favorite</p> <p>18 topic, the RESIs, and that it turned out --</p> <p>19 wait a second. Hold on a second. -- no. I</p> <p>20 don't think -- I withdraw that. I don't think</p> <p>21 there is anything about the RESIs.</p> <p>22 He reported that another change</p> <p>23 that needed to be made that the parties had</p> <p>24 agreed to orally was to eliminate the</p> <p>25 provision that I testified about earlier in</p> <p>TSG Reporting - Worldwide 877-702-9580</p>	<p>1 -Lewkow-</p> <p>2 response to some -- some of your questions</p> <p>3 that provided that if Barclays sold certain of</p> <p>4 the financial positions within one year and</p> <p>5 made a profit, that certain amounts of</p> <p>6 additional consideration or compensation would</p> <p>7 be paid to -- to Lehman, that that provision</p> <p>8 had also -- would be deleted.</p> <p>9 That -- let me just think if there</p> <p>10 was anything else that I can recall. That's</p> <p>11 my recollection.</p> <p>12 MR. GAFFEY: Do you want to take a</p> <p>13 lunch break?</p> <p>14 MR. MORAG: Yes. I believe it's</p> <p>15 available.</p> <p>16</p> <p>17 (Luncheon recess taken at 1:10 p.m.)</p> <p>18</p> <p>19 - - -</p> <p>20</p> <p>21</p> <p>22</p> <p>23</p> <p>24</p> <p>25</p> <p>TSG Reporting - Worldwide 877-702-9580</p>

1 -Lewkow-
2 AFTERNOON SESSION
3 (Time noted: 1:53 p.m.)
4 VICTOR I. LEWKOW, resumed as a
5 witness and testified as follows:
6 CONTINUED EXAMINATION BY
7 MR. GAFFEY:

8 **Q. Mr. Lewkow, before the break you**
9 **were telling us about a conversation between**
10 **Michael Klein, Lori Fife, yourself and some**
11 **others, about discussions that had taken place**
12 **in the morning before the sale hearing.**

13 **Was there any discussion between**
14 **Barclays and its representatives on the one**
15 **hand, and Lehman and its representatives on**
16 **the other about what, if anything, of those**
17 **facts should be told to the judge in the sale**
18 **hearing?**

19 A. First of all, when you say -- you
20 said "morning," I was very careful. I believe
21 it continued until shortly before the hearing
22 started at one o'clock, so I was not limited
23 to the morning. The answer to your question
24 is, no.

25 **Q. As you sat through the sale hearing**

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1 -Lewkow-
2 **and heard the presentations to the Court from**
3 **the various lawyers who spoke to the judge,**
4 **was Cleary and Barclays's comfortable that the**
5 **aspect of the deal that had been discussed in**
6 **that session prior to the sale hearing were**
7 **accurately disclosed to the judge?**

8 MR. MORAG: Object to the form.

9 Certainly you speak to Cleary. As to
10 Barclays, I'm not sure if that calls
11 for a privilege conversation.

12 MR. GAFFEY: Let me just ask as to
13 Cleary. That's a good point.

14 A. As was my understanding was,
15 typical the debtor's counsel on a sale would
16 normally be the ones who take the -- make the
17 presentation to the Court.

18 THE REPORTER: Can I ask you to
19 please speak up? Thank you.

20 THE WITNESS: I'll try.

21 A. As typical, Weil as counsel for the
22 debtor was making the presentation. Maybe in
23 other context people would have seen a draft
24 of what Lori Fife was going to say or the
25 like. But certainly, since it was such a

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1 -Lewkow-
2 moving target we had, as I told you in your
3 last question, really hadn't had any
4 consultation as to what exactly she and
5 Mr. Miller were going to tell the Court.

6 That having been said, as I sat
7 there, I am, as a member of the Bar, I am -- I
8 do have obligations and certainly if I had
9 thought that I heard something that was
10 inconsistent with my understanding of the deal
11 or omitted information that was obvious that
12 should have been -- would make the description
13 of what the judge heard -- and by "description
14 of what the judge heard," I include everything
15 that he heard Wednesday and everything that
16 was in the Asset Purchase Agreement that he
17 had heard before.

18 If I thought he was being misled, I
19 obviously would have, as was Mr. Granfield who
20 was my partner who I was sitting next to, we
21 would have either, you know, addressed the
22 Court directly or would have talked to Weil
23 Gotshal and asked them to make appropriate
24 other statements to the Court.

25 **Q. As I understand the events and**

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1 -Lewkow-
2 **discussions that Mr. Klein described to you,**
3 **essentially because Lehman was unable to**
4 **deliver certain assets within the**
5 **contemplation of the Asset Purchase Agreement,**
6 **other assets were substituted for them?**

7 MR. MORAG: Objection to form.

8 A. No. I totally -- that is not a
9 correct characterization.

10 **Q. What is the correct**
11 **characterization?**

12 A. What I testified.

13 **Q. Is it your testimony that the two**
14 **categories of assets you discussed, 15c3 and**
15 **the contents of the box, were covered by the**
16 **original language of the Asset Purchase**
17 **Agreement?**

18 A. I don't want to give you legal
19 advice. But I will point you to the words of
20 the Asset Purchase Agreement that basically
21 says all assets used in the business, other
22 than Excluded Assets, which is a defined term.

23 **Q. At the time that you had the**
24 **conversation with Mr. Klein and Ms. Fife, was**
25 **it at that point still within the**

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1 -Lewkow-
2 **contemplation of the parties that the**
3 **Clarification Letter would be submitted to the**
4 **Court?**

5 A. Well, we -- I don't -- the -- it
6 had been the contemplation on Wednesday and
7 Thursday, and the goal had been to, as I
8 testified earlier, to give the Court, to
9 give -- to have that ready to give the judge.
10 It was also the intention at that stage to try
11 to close Friday evening.

12 And on that sort of scenario, if,
13 in fact, you were there, it would have been
14 probably possible, one would have hoped to
15 have had a Clarification Letter that one could
16 have given to the Court.

17 It was clear to me, but I don't
18 recall that given what had changed and given
19 that there was a draft that had been served up
20 while we were in court, that -- given that it
21 showed up when it did, I was dubious even
22 before I saw it and before I talked to my
23 colleagues as to whether it did or didn't
24 reflect those discussions given the timing of
25 it.

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1 -Lewkow-
2 which -- and this would have been late Sunday
3 night, early hours of Monday morning. I don't
4 know. But it was very late, very late in the
5 game. It might have even been Monday.

6 In fact, it might have been Monday
7 morning, you know, 5:00, 6:00, 7:00, just
8 shortly before we closed as I think about it.
9 I don't know when it was. But it was late.
10 It wasn't Saturday. It wasn't Sunday morning.
11 It wasn't even Sunday afternoon. And we were
12 very close to, you know, finish. The big
13 issues that people were dealing with were DTC
14 and J.P. Morgan and those sorts of issues were
15 really the big issues that people were facing.

16 But very late in the process,
17 Harvey Miller saying to a group of -- you
18 know, again, I don't know how many other -- it
19 was a very fluid group of people who would be
20 sitting in what room at what time that
21 weekend. But there were a number of other
22 Weil people and Harvey Miller and me. I don't
23 remember whether any of my colleagues were in
24 the room with me.

25 And Harvey looked at the assembled
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1 -Lewkow-
2 So to me, it was, it would have
3 been shocking if before the Court could have
4 approved it, whether we would have had a final
5 Clarification Letter that we could have
6 provided the Court.

7 **Q. By the end of the sale hearing, no**
8 **Clarification Letter had been finalized and**
9 **everybody let to continue their work over the**
10 **weekend. Was there a point during the weekend**
11 **when there were conversations between Barclays**
12 **on the one hand and Lehman on the other**
13 **including their representatives, about**
14 **bringing the Clarification Letter to the**
15 **judge?**

16 MR. MORAG: Objection to the form.
17 You can answer.

18 A. What I recall, and to me the
19 Clarification Letter was -- it was getting
20 close to being signed. I have a vague
21 recollection, I do have a recollection of
22 sitting in the room -- I did a lot of sitting
23 in the rooms -- with a number of Weil Gotshal
24 lawyers, including Harvey Miller, including
25 one or more of his corporate colleagues in

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1 -Lewkow-
2 group and said something like, Does anyone
3 think that we have done anything inconsistent
4 with what we've told the Court and have to
5 bring this -- go back to court? Or something
6 like that. I don't remember the words. I'm
7 totally paraphrasing.

8 My recollection is, I've read
9 Mr. Miller's deposition transcript, and he
10 does not mention who -- he mentions a
11 conversation which is, I think, more or less
12 consistent with my recollection, but he
13 doesn't mention that anyone from Cleary
14 Gottlieb, like me, was there.

15 But -- and he may have had more
16 than one, so I have no way of knowing if it's
17 the same conversation.

18 But I do recall that. And he
19 looked around the room and nobody said
20 anything. It was mostly people on his side.
21 So that's the one that -- you know, in
22 connection with the finalization of the
23 Clarification Letter, that conversation took
24 place.

25 **Q. Were any of your bankruptcy**

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-Lewkow-
partners present during this conversation?

A. I do not believe so.

Q. Have you read any other depositions?

A. Yes. I've read parts or all of Mr. Miller's deposition, Mr. Hughes deposition and Mr. Ridings' deposition. I believe that's all.

Q. Did you read both days of Mr. Hughes deposition?

A. Yes. Skimming, yes.

Q. Did you review any briefs or pleadings to prepare for your deposition?

A. No.

Q. Have you read the Rule 60 filed by the debtor or the Trustee or the Creditors Committee?

A. No.

Q. Have you had them summarized for you?

MR. HUME: Objection. I think that calls for privileged conversations.

DI MR. MORAG: Same objection. I instruct you not to answer.

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-Lewkow-

Q. Was there a time, was there not, where it was contemplated that the Clarification Letter would be styled as an amendment to the APA, as a contractual amendment to the APA. Do you recall that?

MR. MORAG: Objection to form.

A. Contemplated by whom?

MR. GAFFEY: Can I have this marked as 614A?

(Deposition Exhibit 614A, Letter from S&C, CGSH 00020701-20714, marked for identification, as of this date.)

Q. You have before you, Mr. Lewkow, what we marked as Exhibit 614A, a document bearing Bates numbers CGSH 00020701 through 20714. Have you seen that document before?

A. Yes.

Q. I'm sorry. I didn't hear you.

A. Yes.

Q. Did you see it at or around the time that it's dated, September 19, 2009?

A. I think that around that time, I either saw the cover letter, cover e-mail, or saw a cover e-mail from one of my colleagues

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-Lewkow-
basically dismissing it.

Q. Why was it dismissed?

A. Because it was not consistent, best I can recall. This was sent by someone at Sullivan & Cromwell who had not been involved directly in any of the discussions with -- regarding the Clarification Letter. We didn't know where this had come from. Hold on a second. Wait a second.

(Witness reviewing document.)

A. I think. I think a couple of things. Shortly after this -- this came on, what date is this?

(Witness reviewing document.)

A. Friday? May I look at amendment No. 1?

Q. Sure. Absolutely.

A. That you had given me earlier.

Q. That's Exhibit 27, right, for the record?

A. 24.

Q. I beg your pardon. 24. You're right.

MR. HUME: Can I just interject?

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-Lewkow-

To the extent that the question that's pending, I think --

THE WITNESS: I'm not sure.

MR. HUME: -- is why was it dismissed, to the extent to answer that question requires you to divulge any privileged conversations within Cleary or Cleary and Barclays, I instruct you not to answer. Otherwise you can answer.

A. The answer is I'm not sure -- I've seen the e-mail from one of my colleagues, I think it was Dave Wyman. But it was also, and I don't know the precise timing. One of the elements that I see is, and maybe the key element, was this rider that Ms. Summers had sent with this e-mail to deal with what was called -- a new section called a holdback to deal with the DTC problem.

In fact, later that day, Sullivan & Cromwell did, in fact, prepare a First Amendment to the Asset Purchase Agreement to try to address based on what -- what people understood at the time were the -- were the

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-Lewkow-
facts relating to the residential real estate mortgage securities which were later learned were not the facts.

And in fact, amendment No. 1 was signed.

Q. The Asset Purchase Agreement --

A. More accurately, first amendment was signed.

Q. And the Asset Purchase Agreement and the first amendment of the Asset Purchase Agreement, both were submitted to Judge Peck at the sale hearing. Do you recall that?

A. They were both described. I assume -- I know the Asset Purchase Agreement had been submitted in a technical sense, whether the first amendment was or not, I assume it was, but I don't know for a fact.

Q. I'll go back to a question I asked you a few moments ago.

Given that the Clarification Letter recites that it amends the Asset Purchase Agreement, was one of the three verbs that we talked about, that it "amends" the Asset Purchase Agreement.

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-Lewkow-

When Mr. Miller asked whoever was assembled in that room as to whether anyone thought it was different than what had been described to the Court, was there any part of that discussion that noted that this was an amendment to the agreement that had been submitted to the judge?

MR. MORAG: Objection to the form and to the characterization of his testimony regarding Mr. Miller's statement.

A. I don't recall. I would note that Mr. Miller couldn't have been more clear on Friday to the Court that there were major changes in the deal. And so the fact that in part this was to some extent an amendment of certain aspects of the Asset Purchase Agreement, I think it was entirely consistent with what Weil Gotshal told the Court on Friday.

And the Court carefully considered as I recall the comments made by I think a few of the creditors and/or the Committee or somebody, I don't remember who, arguing that

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-Lewkow-
he should wait until he had the final document before he approved the sale. And he discussed that subject in his statements from the bench and concluded that he did not need to wait for a written document.

Q. Was it Cleary's understanding coming out of the sale hearing that there were any limitations on what could be included in the clarification agreement and still be within the terms of the Sale Order?

MR. MORAG: Objection. I think that's work product and privilege. Cleary's understanding? He can't answer it.

MR. GAFFEY: What's the privilege?

MR. MORAG: The mental impressions of a lawyer of what they couldn't --

MR. GAFFEY: I just want you to identify the privilege.

MR. MORAG: I said work product and attorney/client privilege.

MR. GAFFEY: Okay.

MR. MORAG: To the extent they were discussed with attorneys.

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-Lewkow-

Q. Do you recall any colloquy with the Court that you witnessed on Friday concerning any limitations placed on the Clarification Letter?

A. No. None other than what I testified to earlier.

Q. Do you recall any restrictions in the Sale Order itself placing restrictions on the Clarification Letter?

MR. HUME: Same objection, I believe.

MR. MORAG: I think --

MR. HUME: It calls for a legal interpretation of the Sale Order. That is a matter in the litigation and you're asking a lawyer how to interpret it for you. So I think it's asking for work product.

Q. Were there any discussions between Barclays on the one hand including its representatives, and Lehman on the other including its representatives, as to whether there were any limitations in the sale order as to what could be included in the

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<p>1 -Lewkow- 2 Clarification Letter? 3 A. Yes. Two conversations. One I 4 testified to already, the late Sunday night or 5 late Monday morning conversation with 6 Mr. Miller. Earlier, I believe it was Sunday, 7 it was a crazy weekend, I believe it was 8 Sunday, there was a conversation in the 9 hallway where the subject of whether certain 10 circumstances, if we did certain things, would 11 lead to a change of -- that would require 12 going back to the Court. 13 Q. Can you -- 14 A. I may have mischaracterized that. 15 Go ahead. Ask your next question. 16 Q. Okay. My obvious question is: How 17 did you mischaracterize it? 18 But tell me what you remember about 19 that conversation. Who said what to who? 20 A. So, as I testified earlier on 21 Friday, one of the things that Lehman Brothers 22 and Barclays had discovered that among the 23 Purchased Assets that Barclays was going to 24 receive in the -- pursuant to its purchase of 25 substantially all of the assets used in the TSG Reporting - Worldwide 877-702-9580</p>	<p>1 -Lewkow- 2 business, other than Excluded Assets, that 3 although there had been very substantial 4 reductions in what Lehman could deliver, they 5 also had realized and ascertained that there 6 were assets that were part of their assets 7 used in the business that had not previously 8 been sort of focused on specifically by the 9 parties, although they were assets of Lehman 10 used in the business. 11 And I mentioned two -- two 12 categories of such assets. One was the 13 so-called 15c3-3 account. And I think I 14 testified -- I'm not sure, it's been a long 15 day so far. Maybe not. I may not have 16 mentioned this. But one of things that 17 Michael Klein had reported in describing that 18 was that he had been told by someone on behalf 19 of Lehman that there was some e-mail around in 20 which the -- pursuant to which referencing 21 that someone in the division of market 22 regulation at the SEC had confirmed that the 23 15c3-3, the assets in the 15c3-3 could, in 24 fact, be transferred by Lehman and at some 25 point, I believe Saturday morning or at some TSG Reporting - Worldwide 877-702-9580</p>
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<p>1 -Lewkow- 2 point Saturday, we asked Weil to see that 3 agreement. 4 At some later point, I believe on 5 Sunday, but I couldn't swear to it at this 6 stage -- at some point, as I was walking in 7 the hallway of Weil Gotshal, we were in 8 meetings spread out over a large portion of 9 Weil Gotshal that was full of purely -- I 10 believe purely a conference space. There were 11 lots of meetings going on by different people. 12 There were people working on the Transition 13 Services Agreement, there were people dealing 14 with DTC, there were people just getting ready 15 to do a closing. Because all of the work had 16 to be done to be prepared to close, even while 17 other work was going on. Discussions with 18 JPMorgan Chase. 19 Anyway, we were with Weil Gotshal 20 on that floor. And as I was walking down the 21 floor, there were a number of the Weil 22 partners standing at this big desk which I 23 assume was the reception desk, although it 24 wasn't near the elevators where there was a 25 big reception desk. But I don't know. It TSG Reporting - Worldwide 877-702-9580</p>	<p>1 -Lewkow- 2 wasn't clear. Maybe it was for if you needed 3 secretaries during the conference room. I 4 don't remember what it was since I had never 5 been there during a working day, only on 6 weekend. 7 But standing around this desk were 8 a number of Weil lawyers. There may have well 9 been somebody from Lehman or Lazard there as 10 well, I don't recall. I believe Harvey Miller 11 was one of the people among the group that was 12 there for Weil, and they said we have -- you 13 asked for and we now have, it gave me the 14 impression they had just received it in the, 15 you know, minutes or the last hour or two, and 16 certainly not before then was the impression. 17 I'm not sure whether they said that or not. 18 That we now have the e-mail relating to the 19 15c3-3 account. And they showed it to me. 20 And I looked at it. 21 And they said that -- first 22 thing -- well, I noticed and commented on, I 23 believe I commented on, that it was not as I 24 had thought from the SEC but merely an 25 internal Lehman e-mail referencing a TSG Reporting - Worldwide 877-702-9580</p>

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<p>1 -Lewkow-</p> <p>2 conversation with the SEC, with someone on</p> <p>3 staff of the SEC.</p> <p>4 And somebody from Lehman, somebody,</p> <p>5 I'm sorry, from Weil said -- and it may have</p> <p>6 been Mr. Miller but I don't know. But</p> <p>7 somebody from Weil said something like, We</p> <p>8 didn't realize that some -- that the account</p> <p>9 was not entirely securities but included a</p> <p>10 bank account that -- with cash. It was a</p> <p>11 major bank. It was one of the things on that</p> <p>12 e-mail. So it was -- and as I recall, it was</p> <p>13 a million dollars in the bank account that</p> <p>14 Lehman maintained with a third party bank.</p> <p>15 And 700-plus, 760 odd million of securities</p> <p>16 were in that account.</p> <p>17 And in the course of that, one of</p> <p>18 the Lehman people, again, I believe it was</p> <p>19 Mr. Miller, but I'm not sure, said, the</p> <p>20 question is, does anyone remember exactly what</p> <p>21 Ms. Fife -- I don't think Ms. Fife was there</p> <p>22 at the time -- told the Court, when she was</p> <p>23 discussing the fact that you retain the cash</p> <p>24 provision in the Asset Purchase Agreement was</p> <p>25 being eliminated, did she say anything that</p> <p>TSG Reporting - Worldwide 877-702-9580</p>	<p>1 -Lewkow-</p> <p>2 would be inconsistent with us transferring as</p> <p>3 part of all the assets of the business, the</p> <p>4 15c3-3 account which we now know includes a</p> <p>5 bank account.</p> <p>6 There then followed some further</p> <p>7 discussions on a number of -- let me just go</p> <p>8 through them.</p> <p>9 MR. MORAG: If you like.</p> <p>10 A. Go ahead, ask another question.</p> <p>11 Q. Tell me about the further</p> <p>12 discussions.</p> <p>13 A. So -- and I don't remember in</p> <p>14 quite -- again, this was a weekend that was</p> <p>15 very -- at the end of the week that had been a</p> <p>16 very complex and difficult and weak -- not</p> <p>17 just from the financial markets but from</p> <p>18 everyone on both sides of this deal who were</p> <p>19 trying to see if this deal could get done. So</p> <p>20 I don't remember how quickly it got done,</p> <p>21 whether it was dragged out over two hours or</p> <p>22 only over half an hour.</p> <p>23 But there were some follow-up</p> <p>24 conversations and one of the things -- it may</p> <p>25 have even dragged on longer than two hours.</p> <p>TSG Reporting - Worldwide 877-702-9580</p>
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<p>1 -Lewkow-</p> <p>2 Because one of things we asked, or someone</p> <p>3 asked is -- I don't know who asked it. Is it</p> <p>4 possible, can we get a transcript, can we find</p> <p>5 out exactly what Ms. Fife said to the Court to</p> <p>6 see whether or not she said something that</p> <p>7 would be or might appear to be inconsistent</p> <p>8 now that we knew that the 15c3-3 account</p> <p>9 included a bank account.</p> <p>10 All of this is paraphrase. I do</p> <p>11 not remember precisely. All of my testimony</p> <p>12 where I say what people say is paraphrase. I</p> <p>13 don't recall specific words.</p> <p>14 So some time clearly passed while</p> <p>15 that -- but I don't remember how long, while</p> <p>16 people investigated that issue. And we were</p> <p>17 told at some point -- again, I don't know by</p> <p>18 whom -- that it would not be possible to get a</p> <p>19 transcript, that no transcript had been</p> <p>20 prepared, and that in effect the -- there had</p> <p>21 not been a court reporter, shockingly, but it</p> <p>22 had been -- there was a tape of the Court</p> <p>23 hearing, and that tape, we learned, was locked</p> <p>24 up in the courtroom. This was Sunday. I'm</p> <p>25 sure it was Sunday. That tape was locked up</p> <p>TSG Reporting - Worldwide 877-702-9580</p>	<p>1 -Lewkow-</p> <p>2 in the courtroom, in the courthouse, there was</p> <p>3 no way to get access to it, and so there would</p> <p>4 be no way to obtain a transcript.</p> <p>5 There was some further discussion;</p> <p>6 at different points different people joined</p> <p>7 the discussion. Still in the hallway. All of</p> <p>8 this took place in the hallway. It may have</p> <p>9 been a return to the hallway, but it again</p> <p>10 happened in the hallway.</p> <p>11 And among those who joined the</p> <p>12 discussion, and there was more -- in fact, the</p> <p>13 original discussion there may have been four</p> <p>14 or five or six people, by then there were 10</p> <p>15 or 12 people. And included in the further</p> <p>16 discussions were from the Barclays side, both</p> <p>17 Michael Klein, I believe Archie Cox, I'm not</p> <p>18 hundred percent sure and my partner Ed Rosen.</p> <p>19 By then -- by some -- you know, was</p> <p>20 it a second conversation or a third</p> <p>21 conversation? I cannot recall. But at some</p> <p>22 point we had -- "we" being the Barclays side</p> <p>23 talked about --</p> <p>24 Q. You shouldn't tell me about that</p> <p>25 conversation.</p> <p>TSG Reporting - Worldwide 877-702-9580</p>

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<p>1 -Lewkow-</p> <p>2 A. I'm trying to figure out --</p> <p>3 MR. MORAG: There was a</p> <p>4 communication.</p> <p>5 A. There was a communication about</p> <p>6 what we had heard from Harvey Miller and/or</p> <p>7 others from Weil Gotshal that I described in</p> <p>8 my testimony, and that was discussed.</p> <p>9 And putting aside the conversation</p> <p>10 that I had with the Barclays representatives,</p> <p>11 when we got back and the discussion that I'm</p> <p>12 testifying to resumed with the other side, we</p> <p>13 said, look, if there's no transcript, nobody</p> <p>14 remembers precisely what he said.</p> <p>15 And so until we can get a</p> <p>16 transcript -- because she clearly had talked</p> <p>17 about cash and there was, you know -- the</p> <p>18 retained amount was not, was sort of cash that</p> <p>19 was free and available and not tied up in</p> <p>20 positions. It was just cash that we had been</p> <p>21 led to believe at the time of the Asset</p> <p>22 Purchase Agreement was totally free cash that</p> <p>23 they had somewhere, and that they were going</p> <p>24 to transfer as part of the Purchased Assets.</p> <p>25 And nobody knew precisely how</p> <p> TSG Reporting - Worldwide 877-702-9580</p>	<p>1 -Lewkow-</p> <p>2 Ms. Fife had, in describing the changes from</p> <p>3 the deal as reflected in the Asset Purchase</p> <p>4 Agreement, how precisely she had put it in</p> <p>5 describing those changes. And she had clearly</p> <p>6 indicated that that cash wasn't in -- wasn't</p> <p>7 going to be in the deal but again, nobody knew</p> <p>8 precisely what it was.</p> <p>9 And so the alternative, since</p> <p>10 nobody wanted to -- neither Weil Gotshal nor</p> <p>11 Lehman nor Barclays nor the lawyers wanted to</p> <p>12 do anything inconsistent with what the Court</p> <p>13 had been told, there were two choices</p> <p>14 available, which was to wait until Monday, get</p> <p>15 a transcript and see what, in fact, she had</p> <p>16 been told. And then, if necessary, go back to</p> <p>17 the Court.</p> <p>18 There were three choices. Just go</p> <p>19 back to the Court Monday morning or find</p> <p>20 another solution. And the other solution was</p> <p>21 the one that Barclays put on the table of</p> <p>22 saying, okay, we will take just the securities</p> <p>23 portion, 760-some-odd million in securities.</p> <p>24 And in the course of that discussion, Michael</p> <p>25 Klein said that if -- if for some reason you</p> <p> TSG Reporting - Worldwide 877-702-9580</p>
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<p>1 -Lewkow-</p> <p>2 can't --</p> <p>3 And there was some conversation by</p> <p>4 someone at Weil about do we -- do we need SEC</p> <p>5 approval. And Ed Rosen said no. And they</p> <p>6 said well -- they wanted to add language that</p> <p>7 we had no problem with, something saying</p> <p>8 "subject to applicable law," or something to</p> <p>9 that nature that ended up in the Clarification</p> <p>10 Letter.</p> <p>11 And then Klein said, Look, if we --</p> <p>12 you know, we're giving up this billion dollars</p> <p>13 that we thought we were getting as of Friday</p> <p>14 afternoon and we want to make sure we're</p> <p>15 getting this 769 million in securities, and so</p> <p>16 we want to add language that says -- again,</p> <p>17 I'm paraphrasing, that if we can't get that,</p> <p>18 you'll get us 769 million of securities of</p> <p>19 some other securities. That is my</p> <p>20 recollection.</p> <p>21 Q. By the time of the conversation</p> <p>22 with Mr. Miller on either Sunday night or</p> <p>23 Monday morning concerning whether anyone</p> <p>24 thought there were any aspects of the</p> <p>25 Clarification Letter that required going back</p> <p> TSG Reporting - Worldwide 877-702-9580</p>	<p>1 -Lewkow-</p> <p>2 to the Court, had anybody seen a transcript by</p> <p>3 then?</p> <p>4 A. No.</p> <p>5 Q. Had anybody heard the tape by then?</p> <p>6 A. No.</p> <p>7 Q. Was there any discussion on Monday</p> <p>8 before the closing concluded of getting the</p> <p>9 transcript or the tape to make sure the</p> <p>10 Clarification Letter was consistent with the</p> <p>11 Court's limitations or instructions?</p> <p>12 MR. MORAG: Object to the form.</p> <p>13 A. There was no -- to my recollection,</p> <p>14 there was no discussion of that. There was a</p> <p>15 belief by all of the people that's discussed</p> <p>16 that it was really important to get this deal</p> <p>17 closed and announced before the market opened</p> <p>18 Monday morning. There was -- the market --</p> <p>19 there had been press announcements that came</p> <p>20 out after midnight Friday night that had been,</p> <p>21 I believe, in the Saturday papers or Sunday</p> <p>22 papers or both, that the Court had approved</p> <p>23 the sale.</p> <p>24 And both Lehman and Barclays</p> <p>25 believed it was really important both from the</p> <p> TSG Reporting - Worldwide 877-702-9580</p>

1 -Lewkow-
2 financial markets perspective and from the
3 perspective of Barclays of keeping the Lehman
4 employees -- and I want to come back to the
5 Lehman employees in a second -- comfortable,
6 that they should hang around and that there
7 really was a deal. That there had been a real
8 hope -- you know, there had been -- I think
9 some of the press reports might have picked up
10 the concept from this.

11 I'm not sure of this, but I believe
12 at least some of the press reports from people
13 who had been in the courtroom had indicated
14 that the deal might close over the weekend or
15 would -- was expected to close over the
16 weekend.

17 And so there was great concern that
18 if, in fact, the markets opened Monday morning
19 and we had not announced a sale, that people
20 would have thought the deal was falling apart
21 or had fallen apart, was never going to
22 happen, or what the heck is the problem out
23 there. And in the markets that we lived in,
24 this was in the course of the days when the
25 papers were full of information talking about

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1 -Lewkow-
2 whether Morgan Stanley will go under? Will
3 Goldman Sachs go under? Will we be in a Great
4 Depression? That was the context in which
5 this conversation took place.

6 And there was a belief, as I said,
7 that the employees -- that this would be a
8 major problem if we didn't announce the deal
9 that we had closed by Monday morning before
10 the market opened.

11 I mentioned the employees. The
12 employees were very important to this deal.
13 Barclays was not -- you know, all of this
14 discussion we've had and this testimony has
15 been -- and I understand that, has been about
16 the financial assets. Barclays was not doing
17 this deal to buy a portfolio of financial
18 assets. Barclays was doing this deal because
19 it wanted to buy a broker-dealer investment
20 banking business in the United States and was
21 prepared to take very substantial risks in
22 their view in doing that.

23 And I say "very substantial risks"
24 not focusing particularly on the financial
25 assets but because of the fact that when

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1 -Lewkow-
2 people have bought investment banking firms in
3 the United States, they have often worked out
4 very badly.

5 Because it is not only what you pay
6 day one but it's can you make it work? Can
7 you get the employees to stay? Can you get
8 them integrated? Can you keep them happy so
9 as to create value for your shareholders? And
10 that's true in the best of days.

11 And I think of General Electric,
12 pretty savvy acquirers as people would think.
13 They had bought Kidder Peabody, spent a great
14 deal of money and then spent a lot more money
15 over the next X years trying to make it work
16 and had lost a zillion bucks. A zillion is --
17 I don't know. But they lost a lot of money.
18 And not just the money they invested but the
19 money they later put in to try to make it
20 work.

21 And that's what Barclays was
22 committing itself to do. So the reaction of
23 the employees and keeping the employees, in
24 particular the key employees comfortable that
25 they assumed -- and I think rightfully so, and

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1 -Lewkow-
2 they may have known it as a fact, I don't
3 know, but they assumed that really the
4 Barclays -- the best Barclays [sic] people,
5 the ones you most wanted to keep were getting
6 other inquiries from competitors during the
7 the days, during Monday, during the prior week
8 over that weekend, etcetera, and it was
9 important that we keep -- that Barclays be
10 able to keep the people together.

11 All of that went to the point that
12 the parties believed, both parties, that it
13 was really important to try to get this deal
14 announced before the beginning of the market
15 opening on Monday morning.

16 **Q. Was the concern about announcing**
17 **the closing of the deal before the opening of**
18 **the market on Monday morning, a factor in the**
19 **decision of the group as to whether or not to**
20 **bring the Clarification Letter back to the**
21 **judge?**

22 A. No.

23 MR. MORAG: Object to the form.

24 A. The question was, the Court had
25 approved the the Sale Order without the

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1 -Lewkow-
2 Clarification Letter. He knew he didn't have
3 the Clarification Letter.

4 So the only question that I
5 believed that Mr. -- the reason Mr. Miller
6 asked the question, I believe as I described,
7 was, Okay, what we're doing -- what we are
8 doing here in the Clarification Letter, is
9 it -- are we being consistent with what the
10 Court had approved? Which turned on what the
11 Court had heard, and heard again on Wednesday,
12 on Friday in -- in the Asset Purchase
13 Agreement and the other information that the
14 Court had, and were we doing anything that was
15 inconsistent with that.

16 And this was why the question --
17 so, the question was, the Court clearly knew
18 that he didn't have to see the Clarification
19 Letter. The question is had something
20 happened that was inconsistent with what he
21 had been told that would change that plan. He
22 expected us to close over the weekend. That
23 was what was talked about on Friday.

24 So the only reason we would have to
25 go back is if something had changed that made

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1 -Lewkow-
2 it not be -- made a change that was
3 inconsistent with what he had been told. It
4 was for that reason in the prior conversation
5 that there was uncertainty because we weren't
6 sure what he had said about that to the extent
7 it might or might not affect the ability to
8 deliver the cash in that bank account that I
9 mentioned that was part of the assets of the
10 15c3-3 account, that since we weren't sure on
11 that issue, that would have raised the problem
12 that I testified about.

13 But that was the only time that
14 there was any discussion of going back. And
15 even there, the concept was, how do we --
16 Barclays gave up in its mind a billion dollars
17 because it was important to get the deal
18 closed on Monday morning.

19 MR. GAFFEY: I don't have anything
20 further.

21 Thanks. Thanks for your time,
22 Mr. Lewkow.

23 THE WITNESS: Can we take a break?
24 (Whereupon, a recess was taken
25 from 2:41 p.m. to 2:52 p.m.)

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1 -Lewkow-
2 EXAMINATION BY
3 MR. MAGUIRE:

4 **Q. Mr. Lewkow, as you know, my name is**
5 **Bill Maguire, I represent the SIPA Trustee.**
6 **Before we start with questions, your counsel**
7 **is going to put on the record the topics you**
8 **have been designated as representative today.**

9 MR. MORAG: As I think we confirmed
10 to you separately, Mr. Lewkow and
11 Mr. Rosen together are responding to
12 the 30(b)(6) deposition notice served
13 on Cleary Gottlieb and they have
14 separately been subpoenaed for their
15 own personal deposition, which you now
16 have agreed to complete Mr. Lewkow's
17 personal deposition along with his
18 share of the 30(b)(6).

19 With respect to 30(b)(6), the
20 easiest way for me to explain it is
21 that Mr. Rosen is addressing issues
22 relating to the DTC, OCC, and the terms
23 of the Clarification Letter relating to
24 exchange-traded derivatives.

25 To the extent there may be overlap

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1 -Lewkow-
2 with respect to the 15c3-3 issue, then
3 they're both designated.

4 I think you know from the
5 declaration, Mr. Rosen is a market
6 regulation person and Vic is the
7 mergers and acquisition.

8 That may not be the precise answer,
9 but if you have any question, you
10 should certainly ask them of
11 Mr. Lewkow. If it's Ed, he will tell
12 you.

13 MR. MAGUIRE: Thank you.

14 BY MR. MAGUIRE:

15 **Q. Sir, you have seen in the course of**
16 **today a number of drafts of the deal document,**
17 **many of them with the black lining or red**
18 **lining convention.**

19 **What was the practice in terms of**
20 **the Cleary team dealing with the Weil team and**
21 **the other parties in the course of negotiating**
22 **first the APA and then exchanging drafts in**
23 **connection with the Clarification Letter?**

24 MR. MORAG: Objection to form.

25 Vague as to "practice".

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-Lewkow-

A. This was in a very unusual deal because in the time period in which it was done, and I'm going to answer the question first with regard to the Asset Purchase Agreement and then with regard to the clarification.

The Asset Purchase Agreement was -- the first draft of the Asset Purchase Agreement was served up when everyone was involved. I mean, it doesn't mean there weren't phone calls back to clients and others. But all of the lawyers certainly and parts of the welded teams were sitting in one or the other of the conference rooms at Lehman Brothers and the first draft was served up by Lehman's counsel -- Weil and Simpson Thacher, I forget who -- that Monday night and it was signed about 25 hours later.

Between the first draft on Monday night, and Tuesday night when it was signed, there were -- people were working in the same room on the document. It doesn't mean someone didn't take his or her laptop out of the room for a few minutes and worked on it, but

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-Lewkow-

basically people were working on it together. And I am not sure that every interim draft was ever sent by e-mail from anyone to anyone else because people were together.

There may have been copies -- this applies to the Clarification Letter as well -- that were printed out and looked at by people onsite that were never sent outside of Lehman or Weil, depending on what we're talking about the Asset Purchase Agreement or the Clarification Letter. So it was all done very quickly. People were there together.

As to the Clarification Letter, it was largely not negotiations. It was trying to -- and this is true to a large extent in the Asset Purchase Agreement as well. It was trying to, you know, get it right. People in good faith were trying to make sure they weren't -- given the incredible timeframe that was going on here, instead of weeks, it was being done within hours. People were trying -- on the Clarification Letter, I'm talking about Saturday and Sunday.

There were drafts that were traded
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-Lewkow-

back and forth electronically starting some point Wednesday through the Friday afternoon/evening one that I testified about earlier. But starting on Friday when we went to Weil Gotshal it was an effort to get the Clarification Letter finalized, consistent with the intent of the parties, consistent with, you know, the broad -- the Court's approval of the deal, including -- you know, knowing that there was going to be a Clarification Letter that would lay out the details, but certainly to avoid anything. To get it right and to make sure we had a deal that was -- that reflected the intent and didn't screw it up.

So there were drafts. There may have been drafts on Saturday and Sunday at Weil that were not sent electronically. I have no way of knowing for sure.

Q. Specifically with respect to that Saturday and Sunday, are you aware of any instances where there wasn't an opportunity for people to blackline changes for other people to see?

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-Lewkow-

A. I don't -- I don't know. The work -- the other thing about it was that, you know, to some extent, particularly Sunday, people from various parties who were around were sitting in the same room working together on the documents. So it is -- it is certainly possible that there was one or more drafts that were not blacklined. I do not know.

Q. Did you have an expectation over the weekend that if any of the folks changed a term, that would either be discussed with the other side or would be blacklined, there would be something to point out that the change had been made?

A. Well, when you say "the other side," certainly Sunday, is my recollection, Weil Gotshal is certainly keeping the master. So we certainly didn't make any changes that weren't discussed because we didn't have the ability to do that.

Q. How did you make sure you were aware of all the changes that, that somebody was keeping up with all of them?

A. As I said, there were, and it was

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1 -Lewkow-
2 mostly not me, but several of my partners were
3 sitting in a room with Weil Gotshal lawyers
4 and, you know, intermittently working on --
5 along with everything else that was going on,
6 intermittently working towards revising the
7 document. And it doesn't necessarily mean
8 that -- so, if something shows up, for
9 example, in a draft at 8:00 p.m. and I have
10 no recollection, I can go through it. We have
11 documented evidence there were particular
12 drafts that were sent by e-mail.

13 But at 8 p.m. it shows up in the
14 draft, the prior draft at 2:00 p.m., it
15 doesn't mean that the change was agreed to by
16 the party at 8:00 p.m. It might have gone
17 into somebody's computer at 3:15 p.m. but no
18 one produced an interim draft.

19 **Q. How many Cleary professionals**
20 **worked at Weil that weekend?**

21 A. You know, there were Cleary
22 professionals, lawyers, dealing with a lot of
23 different topics. We had a team working on
24 the Transition Services Agreement, which was
25 important to both Lehman, the estate as well

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1 -Lewkow-
2 as to Barclays. We had people dealing with
3 J.P. Morgan and DTC and OCC. We had people on
4 some administrative stuff, but important
5 administrative stuff talking -- dealing with
6 the SEC staff.

7 So we had a lot of people. All
8 told -- oh, and we had people working on the
9 closing, trying to prepare for the closing --
10 I don't know, somewhere between 10 and 15.

11 **Q. You mentioned that you became aware**
12 **at some stage that DTC, of which I understand**
13 **you to mean the Depository Trust Corporation,**
14 **wanted to be protected. How did you become**
15 **aware of that?**

16 A. My recollection is that at the
17 Wednesday hearing on the the Sale Order, that
18 somebody from Wachtell on behalf of DTCC had
19 said some things that they had contacted our
20 client and maybe us, and there started to be a
21 whole issue of whether to use a phrase I had
22 not heard before "the pipes would be open."

23 Whether or not -- if we closed
24 Friday night or over the weekend, whether or
25 not customers and others who were doing

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1 -Lewkow-
2 business would be able to get access to their
3 accounts. And DTC was an important part of
4 that. And without that, the whole -- you
5 know, there would have been an enormous mess
6 on the hands of the financial system. I don't
7 remember precisely when I was told precisely
8 what.

9 **Q. Do you have your Declaration? I**
10 **believe the copy was marked Exhibit 613A.**

11 A. Hold on. Let me find it.

12 (Witness reviewing documents.)

13 A. Yes. I have it.

14 **Q. In Paragraph 3 you describe the**
15 **basis for your Declaration?**

16 A. Yes.

17 **Q. You mention your personal**
18 **knowledge. You mention your review of**
19 **transaction documents. Is that review the**
20 **review that you did at the time or did you do**
21 **a review of transaction documents for the**
22 **purpose of preparing this declaration?**

23 (Witness reviewing document.)

24 A. Where are you looking at, counsel?

25 **Q. First line of Paragraph 3 of your**

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1 -Lewkow-
2 **Declaration.**

3 A. Right.

4 **Q. "I base this declaration on my**
5 **personal knowledge, review of transaction**
6 **documents..."**

7 A. I did, in connection with the
8 preparation of the declaration, review
9 certain -- certain -- yeah, the purchase, the
10 Asset Purchase Agreement and the
11 clarification.

12 **Q. Anything else?**

13 A. I talked to some of my partners, as
14 indicated.

15 **Q. Just talking about transaction --**

16 A. But you're talking about documents.
17 I think to some extent I had looked at some of
18 the drafts. I mean, I was doing this at the
19 same time as I was starting to get ready for
20 this day that I was so much looking forward to
21 for the deposition.

22 So, you know, I had started looking
23 at some materials and so -- so I had looked at
24 some of the drafts, I think, before I signed
25 the declaration.

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1 -Lewkow-
2 **Q. You mention here the recollection**
3 **of your partners. How did you go about**
4 **collecting the recollection of your partners?**

5 MR. MORAG: Object to the form.

6 A. Can I answer that?

7 MR. GAFFEY: Yes.

8 A. Some of it was over the period of
9 months, most of it was in the context of --
10 you know, in the couple of weeks before I
11 signed this. There were -- we had a few
12 meetings. Some of it was, you know,
13 one-on-one with me and a particular partner.
14 Others were sitting in a room with several of
15 my partners who had worked on the deal
16 together with -- in some cases, Mr. Morag, I
17 think once, I think by phone, at least once
18 with Mr. Hume. So some -- but some of it was
19 just in one-on-one conversations with some of
20 my colleagues.

21 **Q. Can you tell me who of your**
22 **partners you met with to discuss this**
23 **one-on-one?**

24 A. In what timeframe, sir?

25 **Q. In the last few weeks. The period**

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1 -Lewkow-
2 **you referred to in your last answer.**

3 A. In the last few weeks, putting
4 aside Mr. Hume and Mr. Morag, had
5 conversations with Duane McLaughlin, David
6 Leinwand, Lindsee Granfield, to some extent Ed
7 Rosen. I think that's it.

8 **Q. And these are all --**

9 A. Oh, Bob Davis. Robert P. Davis.

10 **Q. And these are all people you met**
11 **one-on-one?**

12 A. No. No. I'm not saying that at
13 all. Some of those folks I only talked about
14 this in larger groups. Some I had one-on-one,
15 some I did maybe some of each.

16 **Q. What about Mr. Rosen?**

17 A. Any conversation I had with him was
18 in the context of there was some -- the
19 context of us working together to prepare his
20 declaration and my declaration. So I had no
21 one-on-one conversations with Ed.

22 **Q. Have you seen Mr. Rosen's**
23 **declaration?**

24 A. I did read it, yes.

25 **Q. Did you see any drafts of his**

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1 -Lewkow-
2 **declaration?**

3 A. Yes.

4 **Q. In any of the meetings that you**
5 **described with your partner, did Mr. Jonathan**
6 **Hughes participate?**

7 A. No, I don't believe he did.

8 **Q. Did you have any meeting with**
9 **Mr. Hughes concerning any of the topics for**
10 **this deposition?**

11 A. In what timeframe?

12 **Q. In the last few weeks.**

13 A. No. Last few weeks, I don't know
14 how many weeks is "a few weeks."

15 MR. MORAG: The question relates to
16 the Deposition Notice to Cleary
17 Gottlieb Steen & Hamilton.

18 A. No.

19 **Q. Did you have any meetings with**
20 **Mr. Hughes?**

21 A. Oh, did anyone talk to Mr. Hughes?
22 Is this addressed to me or --

23 **Q. Yes, you.**

24 A. My personal, did I have any
25 conversations in connection with the

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1 -Lewkow-
2 **declaration?**

3 **Q. In connection with any of the**
4 **topics that are in the Notice for this**
5 **deposition.**

6 A. Can I speak with counsel?

7 **Q. Why don't we leave this for a**
8 **break?**

9 A. Sure.

10 **Q. You can ask and then you can answer**
11 **after that.**

12 A. Sure.

13 **Q. I gather from your earlier**
14 **testimony that you had almost a front row seat**
15 **at the sale hearing on the 19th of September?**

16 A. Yes.

17 **Q. And you understood the purpose of**
18 **that hearing was for the Court to decide**
19 **whether to approve the sale of the business to**
20 **Barclays?**

21 A. Yes.

22 **Q. Did you understand that the Court**
23 **needed to understand the economics of the**
24 **transaction in order to make that**
25 **determination?**

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-Lewkow-

MR. HUME: Objection. Vague.
Calls for speculation.

MR. MORAG: Objection to form.

A. I don't know what you mean by "the economics."

Q. Did you have an understanding that the Court needed to know the overall values of what were being provided to Barclays and what Barclays -- the consideration that Barclays was paying?

A. It was my understanding that the Court needed to know the terms of the deal. The terms were, as set forth in the Asset Purchase Agreement, and as -- with such changes as were described to the Court. That is what I believe was required and took place.

Q. And you had no understanding beyond that as to whether the Court needed to know what the economic value of those terms were?

A. You know, "economic value" is -- there's all sorts of -- there are lots of numbers around and the like. There was no --

We were buying basically a business. Obviously, everyone knew that

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-Lewkow-

Barclays thought that it was buying a business because they thought in the long run they would make money; that it would be a good investment for them and a good acquisition -- taking enormous risks in the course of doing that.

So, you know, I don't know what -- I don't know what you're getting at, Counselor. But as I said, the Court needed to know, and did know, the terms of the Asset Purchase Agreement and they were told about the material changes that, you know, were going to be made to deal with -- as described to the Court by Weil Gotshal.

Q. Did you have any understanding as to whether the Court, in making its determination, needed to know what the value was of the terms that you described?

MR. MORAG: Mr. Lewkow --

THE WITNESS: I think he's asking for my legal --

MR. MORAG: To the extent your understanding is based on legal advice that you developed yourself or someone

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-Lewkow-

has provided to you within Cleary Gottlieb, I instruct you not to answer.

A. I have no -- I'm not going to respond.

Q. Sir, on page 7, Paragraph 11 of your Declaration, you refer to the Lehman Trustees' representatives were present at Weil. Did you meet with any of those representatives?

A. Not one-on-one.

Q. Did you have any discussions with them?

A. They were in the room at various times when discussions took place, and I believe that they had other conversations with the Debtors' representatives.

Q. Do you recall any discussions you had with any particular representative of the Trustee?

A. No.

Q. Sir, if you turn to page 9 of your Declaration. If you take a look at Paragraph 17. If you read that first sentence.

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-Lewkow-

(Witness reviewing document.)

A. Read the first sentence?

Q. Yes. The first sentence of Paragraph 17.

A. Uh-huh. Yes.

Q. You refer there to your conversations with your partners?

A. Yes.

Q. What are you referring to?

A. Well, all I'm getting at is that I was signing this declaration and it was my knowledge. But in this sentence, it was not -- as said in one of the introductory paragraphs that you asked me about earlier, I did consult with my -- some of my partners in preparation -- in preparing this declaration. And in particular, I bring attention to the fact that this -- this does -- was not merely in my presence, but I did confirm with my partners that this was -- applied to them as well.

Q. And how did you do that?

A. The conversations I've described to you.

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1 -Lewkow-
2 **Q. With the partners you've named**
3 **earlier; is that correct?**

4 A. Yes. Yes.

5 **Q. And what did you ask those**
6 **partners?**

7 MR. HUME: I'm going to object to
8 that to the extent it calls for any
9 question not necessary to confirm the
10 facts set forth in the first sentence
11 of Paragraph 17 which are facts
12 relating to non-privileged
13 communications and the like thereof
14 between Cleary and Lehman's lawyers, or
15 Lehman.

16 A. All I --

17 MR. HUME: You are not entitled to
18 ask him every aspect of the
19 conversations he had with his partners
20 just because they confirmed facts.

21 A. The answer is I asked --

22 MR. MAGUIRE: Excuse me. Let me
23 just make the record clear.

24 **Q. I'm only asking you now about the**
25 **conversations you had with your partners for**

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1 -Lewkow-
2 **the purpose of being prepared to prepare your**
3 **Declaration and for your testimony today.**

4 **And specifically what I'm asking**
5 **you is: How did you elicit from your partner**
6 **that no such suggestion had been made? The**
7 **suggestion being what you referred to in**
8 **Paragraph 17.**

9 A. I asked the more likely suspects.

10 **Q. And what did you ask them?**

11 A. Whether or not they had ever heard
12 of -- during those -- those day or two, a
13 suggestion by the other side that the property
14 that was securing the exchange- traded
15 derivatives portion of the business that we
16 were buying was not to be transferred as part
17 of the Purchased Assets.

18 **Q. Who was the person on the Cleary**
19 **team who had principal responsibility for that**
20 **part of the deal?**

21 A. Well, "that part of the deal"? So
22 there were conversations including with the
23 OCC that are referenced here, where -- but
24 those weren't conversations with the other
25 side. Those were conversations with the OCC.

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1 -Lewkow-
2 On that subject, I defer to Ed Rosen. He was
3 certainly involved in the OCC conversations
4 and there may have been others who were
5 involved in those conversations. I was not
6 involved in the OCC conversation.

7 I was involved, as were the people
8 I mentioned earlier, in the Clarification
9 Letter. And those reflected conversations
10 that took place in connection -- by those
11 people who were present in connection at one
12 point or another with the Clarification
13 Letter. And they confirmed, as stated in my
14 declaration, that to their knowledge, none of
15 the -- none of those people, in conversations
16 they were party to, had ever suggested what I
17 say here, what I have in this Paragraph 17.

18 **Q. Did anyone tell you about any**
19 **suggestion or any indication from anyone, that**
20 **any portion of the property held to secure**
21 **Lehman's exchange-traded derivatives was not**
22 **to be transferred to Barclays?**

23 A. No.

24 **Q. Did anyone tell you that any**
25 **language --**

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1 -Lewkow-
2 MR. HUME: Excuse me.
3 (Discussion off the record.)

4 BY MR. MAGUIRE:

5 **Q. Did anyone tell you that any**
6 **language concerning the transfer of margin to**
7 **Barclays had been deleted from a draft of the**
8 **Clarification Letter?**

9 MR. MORAG: Object to the form.

10 A. I have trouble with the way you
11 asked that question. There were a lot of
12 changes that got changed over the weekend to
13 the Clarification Letter to implement the
14 transaction, to clarify the transaction,
15 etcetera.

16 So changes were made in the
17 Clarification Letter, but they were
18 consistent. Insofar as they relate to the
19 margin on the exchange-traded derivatives, it
20 was consistent with our understanding with
21 what the Asset Purchase Agreement had always
22 contemplated.

23 And change X by itself might have
24 one impact that you had to fix by, therefore,
25 also changes -- making change Y, but the net

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1 -Lewkow-
2 result was to maintain exactly the same
3 situation as it had always been, that the
4 entire positions, including the margin
5 associated with those positions was part of
6 the deal.

7 **Q. I don't want to speak in**
8 **generalities here. I want to ask you very**
9 **specific questions. Were you personally made**
10 **aware that language providing for margin,**
11 **transfer of margin to Barclays, was deleted in**
12 **a draft of the Clarification Letter?**

13 MR. MORAG: Objection.
14 Mischaracterizes the evidence.

15 A. You're going to have to point me to
16 something if you have something in mind. I
17 can't -- I'm not sure I know what you're
18 referring to, so I can't answer that question.

19 **Q. Do you have any recollection from**
20 **the work that you did that any reference to**
21 **"margin," to transferring margin to Barclays**
22 **was deleted from a draft of the Clarification**
23 **Letter?**

24 MR. MORAG: Object to the form.
25 Mischaracterizes the evidence.
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1 -Lewkow-
2 A. I don't know what you're referring
3 to, if anything.

4 **Q. Do you have any such recollection,**
5 **sir?**

6 A. Deleting a reference to margin? As
7 I said, there were changes that were made, and
8 one change might have an unintended -- might
9 either -- remember, these were drafts. They
10 weren't signed except for the version that was
11 signed.

12 There may have been changes where
13 something got deleted and then the side effect
14 of it was -- by somebody, rightly or wrongly,
15 and then someone said, Wait a second, the
16 effect of that is to have an impact that
17 wasn't intended. So if that clause gets out,
18 we have to add another clause somewhere else.

19 That happened in a few context in
20 the Clarification Letter. I'm not sure if it
21 happened here. And if so, it may have been
22 fixed. But if so, it was to maintain the
23 deal.

24 **Q. I'm not asking you now what might**
25 **have happened. I'm asking you what you do**
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1 -Lewkow-
2 **remember; whether you have a recollection or**
3 **whether you do not have a recollection.**

4 A. The reason -- look, the reason...

5 **Q. Why don't I rephrase the question**
6 **and you can give me your best recollection?**

7 **Sir, do you have a recollection**
8 **whether in a draft of the Clarification**
9 **Letter, language concerning a proposed**
10 **transfer of margin to Barclays was deleted?**

11 MR. HUME: I object to the
12 question. To the extent you're asking
13 about a specific provision that was
14 changed, I think you need to show it to
15 the witness in order for the record to
16 be accurate. Otherwise, I think the
17 record is inaccurate.

18 A. We went through a lot of drafts
19 very quickly, and I'll be happy to go through
20 them and answer your question.

21 **Q. Without going through the draft,**
22 **sir, do you have an independent recollection?**

23 A. No.

24 **Q. Did any of the partners to whom you**
25 **spoke, advise you that there had been language**

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1 -Lewkow-
2 **transferring margin to Barclays that had been**
3 **deleted from a draft of the Clarification**
4 **Letter?**

5 **In any of the conversations that**
6 **you testified that you had with your partners**
7 **over the last few weeks?**

8 MR. MORAG: Objection. That calls
9 for attorney/client communications and
10 work product. You know that Mr. Rosen
11 is responding to an assertion made in
12 this case and they obviously -- he's
13 already testified they discussed it.

14 MR. MAGUIRE: If you're directing
15 the witness not to answer, that's one
16 thing. Otherwise, I'll ask the witness
17 to answer.

18 DI MR. MORAG: I'm directing him not
19 to answer.

20 BY MR. MAGUIRE:

21 **Q. Sir, the next sentence of Paragraph**
22 **17 starts, "to the contrary." Do you see**
23 **that?**

24 A. Yes.

25 **Q. I'd like to ask you to focus on**

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1 **-Lewkow-**
2 **your reference to the parties' communications.**
3 **Do you see that?**
4 **(Witness reviewing document.)**
5 **Q. Is there anything --**
6 **A. Yes.**
7 **Q. -- that you're referring to there**
8 **other than the e-mails to and from the OCC and**
9 **its counsel?**
10 **A. I don't recall. Not to my personal**
11 **recollection.**
12 **Q. You go on to mention the deal**
13 **documents?**
14 **A. I do.**
15 **Q. And you say that they "make clear,**
16 **do you see those words?**
17 **A. Yes.**
18 **Q. And you have a quote there, "Any**
19 **property that may be held to secure**
20 **obligations under such derivatives."**
21 **A. Yes.**
22 **Q. I take it that's a quote from the**
23 **deal documents?**
24 **A. I believe so, unless we put in a**
25 **typo or something. But yes, that's my**
TSG Reporting - Worldwide 877-702-9580

1 **-Lewkow-**
2 understanding.
3 **Q. In making this clear, is it your**
4 **understanding that those words are to be read**
5 **in their plain English meaning and not as any**
6 **term of art?**
7 MR. HUME: Objection. Vague.
8 MR. MORAG: Objection to form.
9 You're asking for a legal opinion. But
10 I think you can answer that question
11 without explaining why your answer is
12 what it is.
13 A. I don't understand the question.
14 **Q. When you say that this language**
15 **makes clear that Barclays was to receive, that**
16 **language, are you telling us it makes it clear**
17 **in its plain English sense? Or are you**
18 **suggesting there is some term of art here that**
19 **we should know about?**
20 MR. HUME: I object to the question
21 as it calls for a legal interpretation,
22 and I think the terms you are using are
23 vague.
24 A. I'm -- I find it vague.
25 **Q. If you're unable to answer the**
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1 **-Lewkow-**
2 **question, sir, you can just say so.**
3 **A. I think the deal documents made it**
4 **clear that they -- that we were to receive --**
5 **that Barclays was to receive the exchange-**
6 **traded derivatives, including any property**
7 **that may be held to secure obligations under**
8 **such derivatives.**
9 **Q. And those words are plain on their**
10 **face; is that your understanding?**
11 **A. I don't think there's a trick in**
12 **those words.**
13 **Q. Are you aware of any discussions**
14 **that anyone in the Barclays side had**
15 **concerning -- with anyone, from Lehman or the**
16 **Trustee or anyone else involved in the**
17 **transaction, concerning the subject of margin?**
18 **A. Yes.**
19 MR. MORAG: With regard to
20 exchange-traded derivatives or
21 otherwise?
22 MR. MAGUIRE: Yes. Any margin.
23 **A. I believe that there was -- there**
24 **is a -- that there is a -- there was**
25 **discussion when language -- in the context of**
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1 **-Lewkow-**
2 finalizing and prior to that the Clarification
3 Letter, that necessarily because some language
4 was added to eliminate any conceivable issue
5 and to reflect the original understanding in
6 the Asset Purchase Agreement, that on the
7 exchange-traded derivatives, that the margin
8 was part of the positions. So, yes.
9 **Q. Tell me what you know of those**
10 **discussions?**
11 **A. Well, it would be helpful if I can**
12 **look at the Clarification Letter and the**
13 **various drafts.**
14 **Q. We will certainly do that. But**
15 **first, I would like your independent**
16 **recollection of the discussions you recall**
17 **concerning the --**
18 **A. My understanding -- and some of**
19 **this is personal recollection and some of it**
20 **is my capacity as a representative of the firm**
21 **under the 30(b)(6) -- that in the course of --**
22 **a couple of things happened. One was the**
23 **discussions with the OCC that I was not**
24 **directly a party to it, that people had**
25 **focused on the margin, and that meanwhile**
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<p>1 -Lewkow-</p> <p>2 people were playing with the -- people had</p> <p>3 made a variety of changes to do other things</p> <p>4 in the Clarification Letter.</p> <p>5 And at some point, language was</p> <p>6 added to confirm that it had -- and it was my</p> <p>7 understanding this was not at all</p> <p>8 controversial, to confirm the intention of the</p> <p>9 parties that in the Asset Purchase Agreement,</p> <p>10 signed in the Asset Purchase Agreement, that</p> <p>11 the intention was that the entire -- that the</p> <p>12 positions relating to exchange-traded</p> <p>13 derivatives that were being acquired by</p> <p>14 Barclays included the margin and in some words</p> <p>15 clarifying and making that specifically that</p> <p>16 those were within the all assets that were</p> <p>17 being purchased, other than Excluded Assets,</p> <p>18 that that was included.</p> <p>19 Q. And who was involved in those</p> <p>20 discussions that you just referred to?</p> <p>21 A. I believe one or more -- I may have</p> <p>22 been a participant to a very minor extent. I</p> <p>23 believe it was one or more of Duane</p> <p>24 McLaughlin, Bob Davis and Dave Leinwand and Ed</p> <p>25 Rosen. Ed Rosen I think may have been</p> <p>TSG Reporting - Worldwide 877-702-9580</p>	<p>1 -Lewkow-</p> <p>2 involved as well.</p> <p>3 Q. You said you were involved to a</p> <p>4 very minor extent. Can you tell me what you</p> <p>5 remember?</p> <p>6 A. What I told you. What I just</p> <p>7 testified to.</p> <p>8 Q. With whom did you have discussions</p> <p>9 about including margin, you personally? Not</p> <p>10 in your representative capacity.</p> <p>11 A. To anyone other than my colleagues</p> <p>12 or my client?</p> <p>13 Q. Yes.</p> <p>14 A. Not sure I did.</p> <p>15 Q. Can you tell me, please, with whom</p> <p>16 Duane McLaughlin had discussions about margin?</p> <p>17 MR. HUME: Excuse me. Is</p> <p>18 Mr. Lewkow designated as 30(b)(6) on</p> <p>19 this topic?</p> <p>20 MR. MORAG: No, he is not actually.</p> <p>21 A. Then you'll have to ask Mr. Rosen.</p> <p>22 Q. The names you mentioned, Duane</p> <p>23 McLaughlin, Bob Davis, Dave Weinman --</p> <p>24 A. It's David Leinwand,</p> <p>25 L-e-i-n-w-a-n-d.</p> <p>TSG Reporting - Worldwide 877-702-9580</p>
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<p>1 -Lewkow-</p> <p>2 Q. What is your basis for</p> <p>3 understanding that they had discussions about</p> <p>4 margin?</p> <p>5 A. Because they were involved in the</p> <p>6 clarification over that weekend. They were</p> <p>7 sitting with Weil Gotshal. Weil Gotshal was</p> <p>8 keeping, at least on Sunday, was running the</p> <p>9 documents and they were sitting there on and</p> <p>10 off talking to Weil Gotshal.</p> <p>11 And where everyone else was around</p> <p>12 in a room that was open to all the folks who</p> <p>13 were there that weekend and people came in and</p> <p>14 out. And that change was made. So that's my</p> <p>15 understanding they were involved.</p> <p>16 Q. Did any of the gentlemen you</p> <p>17 mentioned, the four people you mentioned, tell</p> <p>18 you they had had discussions about margin?</p> <p>19 A. They told me that they were -- one</p> <p>20 or more of them, and I don't remember which</p> <p>21 ones. But I think a couple of them did</p> <p>22 indicate that they were -- that this provision</p> <p>23 which was added by Weil Gotshal in turning the</p> <p>24 documents, reflected conversation they had</p> <p>25 with Weil Gotshal.</p> <p>TSG Reporting - Worldwide 877-702-9580</p>	<p>1 -Lewkow-</p> <p>2 Q. Did they tell you anything more</p> <p>3 about that?</p> <p>4 MR. HUME: This is all --</p> <p>5 THE WITNESS: This is all 30(b)(6).</p> <p>6 MR. HUME: It is either privileged</p> <p>7 or 30(b)(6), and you're not on the</p> <p>8 30(b)(6) topic. The only reason we're</p> <p>9 allowing it to go is based on your</p> <p>10 initial reference there to Paragraph 17</p> <p>11 of the declaration, which I assume is</p> <p>12 what you're asking.</p> <p>13 MR. MAGUIRE: Well, I would like to</p> <p>14 hear what the witness was told about</p> <p>15 the conversations with Weil.</p> <p>16 Q. First of all, can you tell me who</p> <p>17 of the four told you that they had a</p> <p>18 conversation with Weil?</p> <p>19 MR. MORAG: Objection. Asked and</p> <p>20 answered. He just told you.</p> <p>21 A. I said, I don't recall.</p> <p>22 Q. Can you tell me, what did they tell</p> <p>23 you about the conversation other than they had</p> <p>24 a conversation with Weil about margin?</p> <p>25 A. My recollection is that there --</p> <p>TSG Reporting - Worldwide 877-702-9580</p>

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<p>1 -Lewkow-</p> <p>2 their -- either as a result of other changes</p> <p>3 that had been made -- other things in the</p> <p>4 Clarification Letter or as a result of the OCC</p> <p>5 process, that somebody had raised the issue of</p> <p>6 whether it was still clear, as it had been in</p> <p>7 the Asset Purchase Agreement that there was</p> <p>8 any doubt on the subject and that Weil agreed</p> <p>9 that was the intention and they put it in.</p> <p>10 But I don't remember specifically. This was</p> <p>11 not negotiated is my understanding. It was</p> <p>12 agreed it went in because it was reflecting</p> <p>13 the transaction as it had always been --</p> <p>14 "always" meaning from the signing of the Asset</p> <p>15 Purchase Agreement onward, had always been</p> <p>16 understood.</p> <p>17 Q. Do you know any of the details of</p> <p>18 what the Cleary representatives told Weil in</p> <p>19 this discussion --</p> <p>20 MR. MORAG: Objection. Asked and</p> <p>21 answered.</p> <p>22 Q. -- about the margin?</p> <p>23 A. I told you everything I recollect,</p> <p>24 sir.</p> <p>25 Q. You described earlier a hallway</p> <p>TSG Reporting - Worldwide 877-702-9580</p>	<p>1 -Lewkow-</p> <p>2 conversation that you had which started with</p> <p>3 your reviewing an internal Lehman e-mail. Do</p> <p>4 you recall that testimony, sir?</p> <p>5 A. An internal Lehman Brothers'</p> <p>6 e-mail?</p> <p>7 Q. Yes.</p> <p>8 A. Yes.</p> <p>9 MR. GAFFEY: I'll show you a</p> <p>10 document which we will mark as</p> <p>11 Exhibit 615A which is an e-mail from</p> <p>12 Joel Potenciano to a list of people, a</p> <p>13 long list of people, starting with</p> <p>14 Joseph Abate dated Thursday,</p> <p>15 September 18, 2008.</p> <p>16 (Deposition Exhibit, 615A, 2PP</p> <p>17 9/18/08 e-mail from J. Potenciano to</p> <p>18 distribution re: Preliminary 15c3-3</p> <p>19 reserve lock-up as of 9/17/08, marked</p> <p>20 for identification, as of this date.)</p> <p>21 Q. If you can take whatever time you</p> <p>22 need, sir, to examine that document and tell</p> <p>23 me whether you've ever seen it before.</p> <p>24 (Witness reviewing document.)</p> <p>25 A. Well, it may be the printing. But</p> <p>TSG Reporting - Worldwide 877-702-9580</p>
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<p>1 -Lewkow-</p> <p>2 I recall seeing a document that -- that didn't</p> <p>3 have an attachment, the second page -- well,</p> <p>4 wait a second. I never saw this document.</p> <p>5 I've never seen this document. This is</p> <p>6 different than what I've seen.</p> <p>7 Q. You described in some detail the</p> <p>8 hallway conversation. Is there anything that</p> <p>9 you recall of that conversation that you did</p> <p>10 not describe in your prior testimony?</p> <p>11 A. Give me a minute, please.</p> <p>12 I gave a long answer. I don't</p> <p>13 remember precisely what I said. Nothing</p> <p>14 occurs to me at the moment that I did not</p> <p>15 include in that subject.</p> <p>16 Q. Prior to that hallway conversation,</p> <p>17 did you have an understanding of what a 15c3-3</p> <p>18 account was?</p> <p>19 A. As I testified this morning, until</p> <p>20 that Friday afternoon -- this hallway</p> <p>21 conversation was on Sunday. Until Friday</p> <p>22 afternoon, I had -- I may have heard of it.</p> <p>23 But if so, it never registered in my</p> <p>24 consciousness. Prior to that, I really did</p> <p>25 not know anything about 15c3-3 accounts prior</p> <p>TSG Reporting - Worldwide 877-702-9580</p>	<p>1 -Lewkow-</p> <p>2 to Friday.</p> <p>3 Q. In the course of the hallway</p> <p>4 conversation, did anyone describe what a 15c3</p> <p>5 account was?</p> <p>6 A. At some point between Friday</p> <p>7 afternoon and Sunday, I heard a little bit --</p> <p>8 I don't remember from whom -- about 15c3-3</p> <p>9 accounts, and that it would -- that they were,</p> <p>10 you know, accounts maintained by a</p> <p>11 broker-dealer of their own assets, with their</p> <p>12 assets, but that for regulatory reasons were</p> <p>13 segregated in connection with the company's --</p> <p>14 the broker-dealers to protect the interest of</p> <p>15 clients of the broker-dealer.</p> <p>16 Q. You understood that the assets were</p> <p>17 restricted to ensure that customer property</p> <p>18 could be returned to the customers?</p> <p>19 MR. MORAG: Object to the form.</p> <p>20 A. Yeah, I used the word "segregated."</p> <p>21 There were applicable -- I knew there were</p> <p>22 applicable SEC rules. Because if you could</p> <p>23 merely -- if tomorrow Goldman Sachs could take</p> <p>24 its 15c3-3 account and just spend it all on</p> <p>25 bonuses, if you will, that would eliminate the</p> <p>TSG Reporting - Worldwide 877-702-9580</p>

1 -Lewkow-
2 protection that the rule is aimed at doing.
3 I don't know if I would use the
4 word you used, but I recognized that there
5 were regulatory implications about the ability
6 to take the money out that were tied to the
7 accounts of the customers who were being
8 directly or indirectly -- I'm not sure the
9 details of how it works -- to provide some
10 level of effort to the customers and clients.

11 **Q. Was there a discussion of the**
12 **regulatory constraints on Lehman in releasing**
13 **funds from its c3 account?**

14 A. As I testified this morning, I
15 believe that when the discussion took place,
16 somebody from Weil -- none of the Weil people
17 were experts at all on 15c3-3 accounts as they
18 all said at the time. One of them made that
19 point. And on our side, we did have someone
20 who did have real expertise, Ed Rosen, who was
21 participating at least by the latter stages in
22 discussions. So somebody from Weil had raised
23 the question of, "Gee, as far as we at Weil
24 know, maybe we need approval from the SEC to
25 do this. And Rosen said, "You don't need

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1 -Lewkow-
2 understood 15c3-3 with total non-expertise, it
3 is a requirement that you maintain certain
4 reserves in a segregated account to protect
5 the interest of customers. And I don't
6 recall -- I was aware certainly that basically
7 Barclays was assuming the accounts. So I'm
8 not sure whether there was a difference
9 between an excess and a non-excess given that
10 I don't think Lehman, as a broker-dealer, was
11 going to continue to have customer accounts.
12 But that's all I can say on that subject.

13 **Q. In that hallway conversation,**
14 **Mr. Rosen did not say that only the excess**
15 **could be transferred?**

16 MR. MORAG: Is that a question?

17 MR. MAGUIRE: Yes.

18 A. I don't remember the word "excess."
19 You'll have to ask Mr. Rosen.

20 **Q. Did Mr. Rosen say anything about a**
21 **deficiency in the c3 account?**

22 A. There was no discussion of
23 deficiency of the c3 account. Lehman Brothers
24 on Friday -- I was told that Lehman Brothers
25 on Friday had identified this account as

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1 -Lewkow-
2 approval to do it, there is no approval
3 requirement."

4 And they said, "Well, this is an
5 account that we gather -- you know, we know is
6 required as a regulatory matter. Let's at
7 least say --" they may have proposed saying,
8 you know, "subject to SEC approval," I don't
9 remember if they used those words.

10 And Ed said, "No, that's wrong
11 because there is no need for SEC approval."

12 And they said, "Can we say something like
13 'subject to applicable law'?" Or something
14 like that. And since we tried to comply with
15 the SEC laws and rules, Ed did not object to
16 that, and language to that effect went into
17 the document.

18 **Q. Did anyone explain that only an**
19 **amount in excess of a c3 calculation is**
20 **permitted to be removed from such a restricted**
21 **account?**

22 MR. MORAG: Objection to form.

23 Answer with respect to anything you
24 were told from the Lehman side.

25 A. I believe that 15 -- as I

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1 -Lewkow-
2 assets that consistent with the Asset Purchase
3 Agreement that required the delivery of all
4 assets used in the business other than
5 specifically excluded assets. But they
6 identified this account for the first time on
7 Friday as assets that were Lehman, that Lehman
8 could deliver to Barclays as the purchaser.
9 And therefore, certainly no one had a
10 discussion of the deficiency.

11 **Q. Did anyone have any discussion**
12 **about a shortfall in customer property?**

13 A. I don't know what you mean by
14 "shortfall" as opposed to "deficiency." To me
15 it sounds the same. I don't -- no.

16 **Q. Did anyone discuss where Lehman**
17 **would get the property to pay Barclays if it**
18 **was unable, could not get approval, to remove**
19 **the funds from the c3 account?**

20 A. I think --

21 MR. MORAG: Object to the form of
22 the question, to the word "funds." I
23 think there has been testimony what was
24 agreed to be transferred was
25 securities.

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2 A. As I testified earlier, in the
3 course of this discussion, Mr. Klein said in
4 words or in substance that, okay, we will take
5 the billion dollars that are sitting in a bank
6 in cash, deposited with the bank but we want
7 to get the 760-odd million. And if you can't
8 get it there, we want to get it some other
9 way. And that's my recollection of the
10 discussion.

11 **Q. In the middle of Paragraph 20 of**
12 **your Declaration, page 10, after you referred**
13 **to Mr. Klein, you say, "This was agreed to by**
14 **representatives of Lehman." Do you see that?**

15 A. Yes.

16 **Q. What do you mean by "this"?**

17 A. That if the lead -- if there were
18 legal constraints preventing transfer of the
19 rule 15c3-3 account assets, Barclays would
20 receive substitute assets.

21 **Q. And who were the Lehman**
22 **representatives who agreed to that?**

23 A. At a minimum, it included the Weil
24 group that was standing there. I don't know
25 what authority they had. As I said, this took

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2 then it went -- later in the day it got into a
3 draft. So certainly -- I don't know what
4 kind -- if Lehman people were not present at
5 that moment, I assume Weil either had
6 authority or obtained authority to include
7 that in. But you'll have to ask them.

8 **Q. How did Mr. Miller signify his**
9 **agreement to this?**

10 A. He said -- somebody from Weil said,
11 okay, or yes, or that's not a problem. I
12 don't know what words he used.

13 **Q. Who was the person from Weil who**
14 **said one of those variety of comments?**

15 A. I don't -- I don't remember.

16 **Q. And did you understand that person**
17 **from Weil to be agreeing that Barclays would**
18 **get \$769 million unconditionally as part of**
19 **the sale as opposed to simply agreeing to the**
20 **inclusion of the language proposed "to the**
21 **extent permitted by applicable law"?**

22 A. No, I think the phrase -- my
23 understanding at the time and I think what we
24 were all talking about was my understanding
25 was the reason "to the extent permitted by

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2 place over a couple of conversations, I think.
3 At a minimum, it included them.

4 I actually believed that somebody
5 from Lehman may have been with them during
6 this discussion, but I don't have a distinct
7 recollection of that. As I said, the group
8 had gotten larger during the course of these
9 two or three hallway conversations. But I --
10 you know, certainly I leave it to Weil
11 Gotshal.

12 You know, I have enormous respect
13 for Mr. Miller and Mr. Roberts and Ms. Fife
14 and the other lawyers, and Mr. Masaneo, and
15 the other lawyers who were there doing their
16 best to represent their clients. They know
17 what things they need to go back to and not go
18 back to.

19 So if there was no one from Lehman
20 Brothers there -- I just don't recall if
21 someone from Lehman was there at that moment
22 or not. But Lehman -- Lehman's counsel -- and
23 there may have been somebody from Simpson
24 Thacher there as well. May well have been.

25 Lehman's counsel agreed to it. And

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2 applicable law" or words of that nature were
3 going to get added to the language was because
4 of the technical rules governing 15c3-3 that
5 the Weil lawyers had conceded they were not
6 experts on.

7 I had absolutely no expectation,
8 and it was never suggested, to my
9 recollection, that the limitation "to the
10 extent permitted by applicable law" was a
11 limitation on the broader statement: if we
12 can't transfer that, we will transfer
13 something else. That was not my
14 understanding.

15 **Q. Did you do anything to confirm your**
16 **understanding that when Weil, somebody at Weil**
17 **said "okay" or "yes", they were agreeing to**
18 **make this obligation unconditional as opposed**
19 **to simply agreeing to the inclusion of the**
20 **language proposed "to the extent permitted by**
21 **applicable law"?**

22 A. The language was drafted to reflect
23 the conversation that took place in the
24 hallway and was included in the Clarification
25 Letter. I believe there is nothing else to

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2 say. People agreed to a principle, it got
3 reflected in the Clarification Letter.

4 **Q. A couple of lines down in your**
5 **Declaration, you refer to some other language,**
6 **it's the phrase you referred to "are**
7 **securities of substantially the same nature**
8 **and value." Do you see that?**

9 A. Yes.

10 **Q. Who proposed that language?**

11 A. I described the agreement, the oral
12 agreement that was reached in the hallway. It
13 was then left to the folks focusing on pushing
14 the paper forward on the Clarification Letter,
15 which included both Cleary folks and Weil
16 folks and there were others involved, or at
17 least in the room at some time during that
18 conversation.

19 And I believe that somebody did a
20 first version of it that referred to -- of the
21 same nature and didn't include "and value."
22 And then someone on the Barclays' team said,
23 "Well, that doesn't work because that
24 wouldn't -- what does that mean?" So the
25 words "and value" got put in.

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2 **Q. Did anyone at Barclays go back and**
3 **ask anyone at Weil what that meant?**

4 A. What what meant, sorry?

5 **Q. The words "are securities of**
6 **substantially the same nature"; what was meant**
7 **by that language?**

8 A. With all due respect, when people
9 are trying to write a document and trying to
10 get a deal done under incredibly difficult
11 circumstances and somebody writes a language
12 that on its face does not work to solve the
13 problem that had been discussed and agreed to
14 on all matters by people to solve a problem,
15 and it was obvious that to say "the same
16 nature" could mean one dollar worth of
17 securities, that would have been an idiotic
18 remark.

19 We had no reason to believe that
20 Weil was trying to sabotage the deal that
21 their colleagues had agreed to. And so to my
22 understanding, someone said, "You got to add
23 the word 'and value'," and they said "Of
24 course," and it happened.

25 **Q. From whom did you get that**

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1 -Lewkow-
2 **understanding?**

3 A. From my colleagues, Mr. Davis,
4 Mr. McLaughlin and Mr. Leinwand and one or
5 more of that group.

6 MR. HUME: Can we take a short
7 break?

8 THE WITNESS: Yes, I can use a
9 bathroom break. Thank you.

10 (Whereupon, a recess was taken
11 from 3:58 p.m. to 4:24 p.m.)

12 BY MR. MAGUIRE:

13 **Q. Sir, over the course of the weekend**
14 **prior to closing, did you participate in any**
15 **meetings with the Creditors Committee?**

16 A. No. Let me add to that. That
17 isn't to say that one or more members of the
18 Creditors Committee may have been present when
19 meetings took place. But I certainly did not
20 have any -- to my knowledge, any particular
21 meetings with the Creditors Committee.

22 **Q. Let me show you a document that's**
23 **previously been marked as Exhibit 451.**

24 A. I got it.

25 **Q. Do you recognize that document,**

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1 -Lewkow-
2 **sir?**

3 A. Yes.

4 **Q. What is it?**

5 A. This looks like, and this is the
6 document, I'm quite sure, that I was shown and
7 you asked me about before. This is the
8 letter -- the internal Lehman Brothers' e-mail
9 that I was shown that Sunday by Weil Gotshal
10 with respect to the 15c3-3 reserve account.

11 **Q. And you mentioned that a bank had a**
12 **billion dollars of cash. Are you referring to**
13 **the cash with Wells Fargo?**

14 A. Yes. On deposit with Wells Fargo.

15 **Q. So you understand this was, taking**
16 **the billion dollars in cash out of the**
17 **transaction left \$769 million in qualified**
18 **securities?**

19 A. Yes.

20 **Q. And that was in the subject of the**
21 **provision that was put in the Clarification**
22 **Letter?**

23 A. Yes.

24 **Q. You'll see the reference here to**
25 **Mike Macchiaroli?**

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-Lewkow-

A. Yes.

Q. Did anyone from Barclays have any discussions with Mr. Macchiaroli prior to the closing concerning this issue?

MR. MORAG: To your knowledge.

A. Not to my knowledge.

Q. Did anyone from Barclays have any discussion with anyone at the SEC concerning the c3 account?

A. Not to my knowledge.

Q. I'll show you a document we previously marked as Exhibit 49.

A. Yes.

Q. Do you know whether you've seen this before?

A. Yes, I have.

Q. When did you first see it?

A. At or about the time it was sent.

Q. When did you last see it?

A. I think in preparation for this deposition, it's -- I didn't study it closely. But I did quickly look at the various drafts that my counsel had provided me.

Q. And you understand this is a

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revised Clarification Letter that Mr. Leinwand sent around on Saturday, September 20th?

A. Revised draft Clarification Letter that Mr. Leinwand sent around at -- late Saturday night. It went out at 11:13 p.m. Yes.

Q. And he circulated, the attachment is both a clean version and a blackline?

A. That is correct.

Q. The blackline is about halfway through the document and it has at the top "Cleary Gottlieb Comments." Do you see that?

A. Yes.

Q. If you turn to the second page of that, sir.

A. Of the blacklined version?

Q. Yes.

A. Yes.

Q. You will see there is a blackline in section (d), the second half of the page.

A. Yes.

Q. And if you scroll down about two-thirds of the way down, you'll see a reference to a Section A. Do you see that?

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A. I see it.

Q. And the language reads, "By or on behalf of LBI pursuant to Rule 15c3-3 of the Securities Exchange Act of 1934, or otherwise..." Do you see that?

A. I do.

Q. And then it goes on to say, "Are by or on behalf of any clearing agency or any clearing organization to collateralize, guarantee, secure, whether as margin, guarantee funds, deposits or in any other form." Do you see that that language, sir?

A. I do.

Q. Now, were you aware that that language was deleted from the next draft, at least a subsequent draft of the Clarification Letter?

MR. MORAG: Objection to the form of the question; the characterization "delete."

A. I believe so, yes.

Q. I'll show you a document that we'll mark as 616A, which is Bates stamped WGM-LEHMAN-E 00006236 through 6264?

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-Lewkow-

(Deposition Exhibit 616A, 9/22/08 e-mail from R. Messineo re: Lehman-Barclays, WGM-LEHMAN-E 00006236-6264, marked for identification, as of this date.)

(Witness reviewing document.)

Q. Take whatever time you need to review the document, sir. What I want to know is whether you have ever seen it before, this or any part of the document?

A. Well, I certainly never saw the cover e-mail from Mr. Messineo to your colleagues at Hughes Hubbard. I'm just trying to figure out the timing.

(Witness reviewing document.)

A. May I look at the other -- the draft I was furnished this morning in connection with this deposition to see if this looks the same as the one that I've seen with a different transmittal e-mail?

Q. Feel free to look at any of the --

A. Thank you.

Q. -- exhibits there.

MR. MORAG: The 28 and the 37 --

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1 -Lewkow-
2 don't go through Sunday.
3 THE WITNESS: Yeah, I'm looking at
4 28. Well, I don't have it here then.
5 Okay. Let me look at it and see if it
6 helps me...
7 A. I don't -- I would need to look at
8 ones that I know I've seen. This does not --
9 I don't know that I've seen this.

10 **Q. If you look in particular --**

11 A. But, you know, and I realize
12 litigators do things the way they do things
13 for the reasons they do, but I'm sure you have
14 all the ones that have been produced that we
15 know I've received. So if you show me one
16 that's got -- that I know I received it, then
17 I can tell you if this is the same one or not.
18 But on the face, and looking quickly, I don't
19 recall this one.

20 **Q. If you turn to the second page of**
21 **the document.**

22 A. Yup.
23 **Q. Do you see that same section I**
24 **believe we were looking at. In the prior**
25 **draft, it was (d); here it is (c). You will**
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1 -Lewkow-
2 **see the language that I asked you to read**
3 **before --**
4 A. Yup.
5 **Q. -- concerning margin --**
6 A. Yup.
7 **Q. -- is crossed out or deleted?**
8 A. Yup.
9 **Q. Does that refresh your recollection**
10 **that you were aware that that language had**
11 **been deleted from a draft of the --**

12 MR. MORAG: Objection to form.

13 A. By counsel for Lehman Brothers?

14 **Q. By anyone.**

15 A. It appears -- I don't know if this
16 was -- again, it may have been delivered -- I
17 can't tell without seeing this. It may well
18 have been deleted from language that was --
19 that we -- the version we saw. I do think
20 that language never ended in, so I know it was
21 deleted at some stage.

22 Whether this draft is the one I saw
23 or not? I think that language went in there,
24 is my understanding. It went in there and I
25 think it was wrong. It was taking away what
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1 -Lewkow-
2 had been -- it's interesting. The language
3 which you've shown me that went in, and it
4 went in a draft that my partner Mr. Leinwand
5 sent out.

6 But it went in there and it
7 suggests that we were taking out of the deal
8 somehow what had been agreed to, which is that
9 margins is part of the position. And I think
10 that may be to deal -- in an effort, a
11 mistaken effort to deal with OCC issues. But
12 it was not the deal, and it should have never
13 gone in, and it was taken out.

14 **Q. Just so I can catch up with you.**
15 **You were referring to the version**
16 **that Mr. Leinwand sent out. That was**
17 **Exhibit 49?**

18 A. Yes. You showed me language that
19 you read from that Exhibit 49.

20 **Q. You're referring to the margin**
21 **language on page 2 in section (d)?**

22 A. Yes. That language was added,
23 correct. And it's in the -- it was added as
24 part of -- hold on a second.

25 It was part of a sentence that said
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1 -Lewkow-
2 "Excluded Assets" -- I'm now confusing myself.
3 Hold on a second.

4 (Witness reviewing document.)

5 A. Hold on a second. I withdraw what
6 I just said. I shouldn't jump to conclusions.
7 I think this is -- excuse me.

8 (Witness reviewing document.)

9 **Q. I think you withdrew what you said,**
10 **so maybe I should ask another question.**

11 A. Start over. Yes.

12 **Q. Please take whatever time you need**
13 **to answer.**

14 A. I rushed. I should take my time
15 then and answer it carefully.

16 **Q. Understand that I don't want you to**
17 **reach conclusions. I'm really looking for**
18 **your recollections of what you previously**
19 **concluded or previously understood.**

20 A. Uh-huh.

21 **Q. Does looking at the exhibits we put**
22 **in front of you refresh your recollection that**
23 **there was, in a draft of the clarification**
24 **language of the Clarification Letter, language**
25 **concerning margin?**

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-Lewkow-

A. I see there is such language. I very vaguely recall such language now that I see it, but it's very vague.

Q. Do you have a recollection as to whether that language was proposed by Cleary Gottlieb?

A. I don't know who proposed it. It was sent out in a draft that Dave Leinwand sent out.

(Witness reviewing document.)

Q. Do you have an understanding, sir --

A. I was --

Q. Sorry.

A. I was taking another look at it. I have not finished the answer.

Q. Sure. Please take as much time as you need.

(Witness reviewing document.)

A. I believe.

(Witness reviewing document.)

A. I'm not certain.

Q. Do you know, sir, whether this language was put in to reflect the business

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agreement between the parties, that Barclays should get Lehman's margin?

MR. MORAG: Objection to form.

A. It was my understanding that the Asset Purchase Agreement contemplated as part of Barclays' purchase of all of the assets used in the business subject -- other than Excluded Assets. That among the assets that Barclays was entitled to under the original Asset Purchase Agreement, including margin relating to the account that they were buying as part of the purchase of business.

So to suggest that it was put in by someone in a draft was not to say that it wasn't -- again, these are people who were dealing with a lot of different things. It was not to make a -- to the extent that's what this document does or would have done if it were in the final agreement, it was not, in my view, making a change in what the deal was.

Q. So you understood that this language was effectuating the APA by conveying the margin from Lehman to Barclays?

MR. MORAG: Objection to the form

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-Lewkow-

of the question.

A. "Effectuating" is a funny word. But I think it was consistent with the APA in view of the -- again, things were being done to the Clarification Letter on other things that had been done. And there had been changes made to cause romanette ii on page 1 over to the definition of what were Purchased Assets.

We had, by this stage, I believe, deleted the reference that had originally been in the Asset Purchase Agreement. The reference to "long positions" had been deleted, and there were changes that reflected the Repurchase Agreement that we were -- we had already paid for. Barclays had effectively already paid for the securities. And those were changes. And I think people were trying to make changes that preserved the -- the provision of what was in the Asset Purchase Agreement.

Q. Did you have an understanding that there was anything wrong in this language, that there was anything -- any respect to

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-Lewkow-

which this reference to "margin" here, this language, failed to effectuate the parties' business agreement?

MR. HUME: I'm going to object to the form of the question and the lack of foundation. Just to make clear -- correct me if I'm wrong -- Mr. Lewkow is not the 30(b)(6) witness --

THE WITNESS: No, I'm not.

MR. HUME: -- on this provision?

MR. MORAG: He is not.

MR. HUME: And he's testified he doesn't recall the provision.

THE WITNESS: I don't recall.

MR. HUME: So I think I'm going to object on lack of foundation as well.

Q. You don't --

A. I don't personally recall.

Q. You don't recall. Okay.

You referred to "Excluded Assets." Can I ask you to take out the Asset Purchase Agreement, Exhibit 1, somewhere in that file before you?

A. Yup. I have it.

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1 -Lewkow-
2 **Q. When you described in your**
3 **Declaration that none of your partners had**
4 **indicated any suggestion that any property**
5 **that was collateralizing exchange-traded**
6 **derivatives was going to Barclays?**

7 MR. MORAG: That was not --

8 THE WITNESS: I think you got it
9 backwards.

10 MR. MAGUIRE: I'm sorry. Did I put
11 a double negative there?

12 MR. MORAG: You said none was going
13 to Barclays?

14 A. Why don't you start over?

15 **Q. Yes.**

16 A. Do you want to look at my
17 declaration?

18 **Q. Still looking at your Declaration.**
19 **Yes. It think it was Paragraph 17 we were**
20 **looking at.**

21 A. Yes.

22 **Q. And that was the suggestion there?**

23 A. That "no one had suggested in my
24 presence or based on my conversations" --

25 **Q. Yes.**

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1 -Lewkow-

2 A. "--in my partners' presence that
3 any portion of the property held to secure
4 Lehman's exchange-traded derivatives was not
5 to be transferred to Barclays as part of the
6 transaction."

7 **Q. Did any of your partners bring to**
8 **your attention any of the particular**
9 **provisions of the Asset Purchase Agreement in**
10 **connection with the conversations you**
11 **described in Paragraph 17?**

12 MR. HUME: I think that calls for
13 privileged work product. You're asking
14 did anyone --

15 **Q. Yes. Did anyone say to you in**
16 **words or substance: Mr. Lewkow, you've asked**
17 **me whether anything here is suggestive that**
18 **this property was not going to Barclays, well,**
19 **you better take a look at this particular**
20 **section of the Asset Purchase Agreement?**

21 MR. HUME: I think it still does
22 call for a privileged communication or
23 interpretation of the contract. The
24 declaration says no one --

25 MR. MORAG: Why don't you ask him
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1 -Lewkow-
2 if his statement of declaration is
3 consistent with his understanding of
4 the Asset Purchase Agreement?

5 **Q. I'm asking about the conversations**
6 **that you had with your partners that you**
7 **referred to.**

8 **In any of those conversations, did**
9 **any of those partners say, You better look at**
10 **this?**

11 A. I'm not an expert on 30(b)(6). I
12 would refer to M&A litigation counsel who are
13 sitting in the next two seats to my right.

14 But it seems to me if any of them
15 did do it and they were here in their personal
16 capacity being deposed about how they
17 interpreted the contract, they wouldn't be
18 required to tell you the interpretation.

19 Therefore, the fact is that as
20 30(b)(6), I can't imagine, changes the rules
21 on that. But I would defer to my counsel and
22 counsel for Barclays on that. I told you, I
23 used to be a lawyer.

24 MR. HUME: I think you should
25 answer the question and we should take

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1 -Lewkow-
2 a short break.

3 THE WITNESS: I should answer the
4 question?

5 MR. HUME: Answer the question if
6 it doesn't reveal a privilege.

7 A. Can I hear the question again?

8 **Q. Did any of the partners to whom you**
9 **refer in Paragraph 17 say to you, in**
10 **connection with whether there was any**
11 **suggestion that any of this property was not**
12 **to be transferred to Barclays, did any of them**
13 **say, You better look at this provision of the**
14 **Asset Purchase Agreement?**

15 A. No.

16 **Q. Either in those words or in**
17 **substance.**

18 A. I am familiar with the Asset
19 Purchase Agreement. I think the Asset
20 Purchase Agreement always reflected the
21 understanding of the parties that this was
22 coming along that I could point to, they can
23 point to provisions that show that.

24 Did any of them suggest there was
25 language inconsistent with this? I don't

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-Lewkow-
recall anyone suggesting that.
MR. HUME: Do you want to take a
short break?
MR. MAGUIRE: Sure.
(Whereupon, a recess was taken
from 4:50 p.m. to 5:01 p.m.)
MR. MAGUIRE: Sir, I have no
further questions, thank you.

EXAMINATION BY
MR. HUME:

**Q. Mr. Lewkow, I'm Hamish Hume and I'm
here representing Barclays, as you know. I
just wanted to make sure one thing on the
record is clear.**

**On page 197 of the rough transcript
we are looking at, you were asked a question
by counsel for the Trustee. This was
referring to the conversation you testified to
with Weil Gotshal about the \$769 million in
securities.**

**The question was: "And did you
understand that person from Weil to be
agreeing that Barclays would get \$769 million
unconditionally as part of the sale as opposed**

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**-Lewkow-
to simply agreeing to the inclusion of the
language proposed 'to the extent permitted by
applicable law'?"**

**Your answer was "No," and then you
went on with an explanation.**

**Let me just make sure the record is
clear in terms of the "yes" and the "no" of
that question.**

**Was it your understanding from your
conversation with Weil Gotshal that you
referenced relating to the \$769 million in
securities, that Barclays did have an
unconditional right to receive those assets?**

A. Yes. The question, with all due
respect, was ambiguous, because I was offered
a choice, was I agreeing -- was the Lehman
person agreeing unconditionally to pay or
agreeing -- "simply agreeing," was your term,
to the inclusion of language "to the extent
permitted by applicable law." That was a
choice. And I started with "no." My "no" was
addressed to the end of your question, that it
was not merely "to the extent permitted by
applicable law."

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-Lewkow-
It was, as I explained in the rest
of my answer, the discussion of "the
applicable law," as I understood what the
individual was saying on behalf of Lehman, was
merely to 15c3-3 and not to the concept that
if that were not payable, there would be an
unconditional obligation to deliver the
securities some other way.

MR. HUME: I have no other
questions.

MR. MAGUIRE: Nothing further.
(Time noted: 5:05 p.m.)

VICTOR I. LEWKOW

Subscribed and sworn to before me,
this ____ day _____ of 2010.

Notary Public

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WITNESS EXAMINATION BY PAGE
V. LEWKOW MR. GAFFEY 5
MR. MAGUIRE 160
MR. HUME 226

DIRECTIONS: PAGE 79, 134, 185
MOTIONS: [None]
REQUEST: [None]

-----EXHIBITS-----
EXHIBIT FOR I.D.
Exhibit 613A 6
Declaration of Victor Lewkow

Exhibit 614A 135
Letter from S&C, CGSH
00020701-20714

Exhibit, 615A 195
2PP 9/18/08 e-mail from J.
Potenciano to distribution re:
Preliminary 15c3-3 reserve lock-up
as of 9/17/08

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-----EXHIBITS-----

[previously marked]

EXHIBIT FOR I.D.

Exhibit 1 29
Exhibit 19 31
Exhibit 518 45
Exhibit 25 47
Exhibit 24 58
Exhibit 27 69
Exhibit 579B 74
exhibit 581B 92
Exhibit 28 93
Exhibit 29 93
Exhibit 30 93
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Exhibit 34 93
Exhibit 35 93
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Exhibit 37 93
Exhibit 34 95
Exhibit 451 208
Exhibit 49 210

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C E R T I F I C A T E

STATE OF NEW YORK)

) ss.:

COUNTY OF KINGS)

I, MAYLEEN CINTRON, a Registered
Merit Reporter, Certified Realtime
Reporter and Notary Public within and
for the State of New York, do hereby
certify:

That VICTOR I. LEWKOW, the witness
whose deposition is hereinbefore set
forth, was duly sworn by me and that
such deposition is a true record of the
testimony given by such witness.

I further certify that I am not
related to any of the parties to this
action by blood or marriage; and that I
am in no way interested in the outcome
of this matter.

IN WITNESS WHEREOF, I have hereunto set
my hand this 10th day of February, 2010.

MAYLEEN CINTRON, RMR, CRR

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ERRATA SHEET FOR THE TRANSCRIPT OF:

Case Name: Re: Lehman Brothers Holdings

Dep. Date: February 10, 2010

Deponent: Cleary Gottlieb | Victor I. Lewkow

Pg. Ln. Now Reads Should Read Reason

Pg. Ln.	Now Reads	Should Read	Reason
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VICTOR I. LEWKOW

SUBSCRIBED AND SWORN BEFORE ME,

This__ day of_____, 2010.

Notary Public

My Commission Expires:_____

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